UNITED
NATIONS

TD

United Nations
Conference
on Trade and
Development

Distr.
GENERAL

TD/B/COM.2/CLP/6
18 November 1998

ENGLISH
Original: ENGLISH/SPANISH

COMMISSION ON INVESTMENT, TECHNOLOGY
AND RELATED FINANCIAL ISSUES

ISSUES RELATED TO COMPETITION LAW OF PARTICULAR RELEVANCE TO DEVELOPMENT

PREPARATIONS FOR A HANDBOOK ON COMPETITION LEGISLATION

Handbook on Competition Legislation

Note by the UNCTAD secretariat

GE.98-52610 (E)

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INTRODUCTION

1. The Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, provides in section F.6 (c), for the compilation of a Handbook on Restrictive Business Practices Legislation.

2. Furthermore, the Expert Meeting on Competition Law and Policy, at its meeting in Geneva on 24-26 November 1997, requested the UNCTAD secretariat to continue to publish further issues of the Handbook on Competition Legislation, including regional and international instruments (see Agreed Conclusions, annex I, in TD/B/COM.2/9-TD/B/COM.2/EM/12).

3. Accordingly, the secretariat has prepared this note containing commentaries on and texts of competition legislation of Colombia, Japan and South Africa.*

4. Thus, to date the UNCTAD secretariat has issued notes containing commentaries on and texts of competition and restrictive business practices legislation of 36 countries: Algeria, Belgium, Brazil, Bulgaria, Canada, Chile, Colombia, Côte d'Ivoire, Czech Republic, Denmark, Finland, France, Germany, Hungary, Italy, Jamaica, Japan, Kenya, Lithuania, Mexico, Norway, Pakistan, Poland, Portugal, Republic of Korea, Romania, Slovak Republic, South Africa, Spain, Sri Lanka, Sweden, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela and Zambia.

5. The Secretary-General of UNCTAD, in his note of 8 March 1996, requested States which so far had not done so, or which had introduced new or amending competition legislation since their last communication to the UNCTAD secretariat, to provide the UNCTAD secretariat with their relevant legislation, court decisions and comments, on the basis of the format indicated (see below). (However, in the case of States adopting competition legislation for the first time, the commentary may not necessarily accord with the format.) In order to facilitate the reproduction of texts of legislation in more than one official language of the United Nations, States were invited to submit, if possible, the text of their legislation in one or more other languages of the United Nations.

6. The UNCTAD secretariat is grateful to the States which have contributed the material requested for the compilation of the Handbook, and once again requests States which have not yet done so to comply with the request of the Secretary-General of UNCTAD referred to above.

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* The contributions are reproduced in the language and form in which they were submitted to the secretariat.

COMMENTARIES ON COMPETITION AND RESTRICTIVE BUSINESS PRACTICES LEGISLATION

I. COMMENTARY BY THE GOVERNMENT OF COLOMBIA ON COLOMBIAN COMPETITION LEGISLATION

A. Description of the reasons for the introduction of the legislation

Competition is a fundamental factor stimulating companies to achieve efficiency and to offer goods and services in ever-increasing numbers and at lower prices. In a competitive market efficient resource allocation and the well-being of the population are promoted.

B. Description of the objectives of the legislation and the extent to which they have evolved since the introduction of the original legislation

The objective of the legislation on commercial competition is the defence of the interests and of the quality of life of consumers. It aims to improve the efficiency of the production system, to ensure that a variety of prices and qualities of goods and services are available on the market, to guarantee consumers freedom of choice among those goods and services and to ensure that companies can operate freely in markets (section 1, paragraph 2, of Decree 2153 of 1992).

History

As early as 1959, Colombia adopted a law covering the subject of protection of competition in a context of restrictive commercial practices. However, owing to the general terms in which the rules were formulated, the procedures established for their application, the economic policies pursued over the last 30 years and the institutional capacity of the bodies charged with their implementation, the rules were not applied in practice.

In December 1992 Decree No. 2153 was adopted. It contains provisions concerning free competition and restrictive trade practices. It was a response both to the mandate given under the 1991 Constitution and the policy of modernization of the economy adopted by the Government. It was designed to stimulate competition in the market and to improve the efficiency of the economy and the well-being of entrepreneurs and consumers.

C. Description of the practices, acts or behaviour subject to control, indicating for each the type of control and the extent to which the practices, acts or behaviour mentioned are covered by that control

Article 1 of Law 155 of 1959, as amended by article 1 of Decree 3307 of 1963, prohibits agreements of any kind designed directly or indirectly to restrict the production, supply, distribution or consumption of raw materials, products, merchandise or services of domestic or foreign origin and, generally speaking, practices, procedures or systems of any kind, of a nature to restrict freedom of competition and to maintain or fix inequitable prices.

Article 46 of Decree 2153 of 1992 stipulates that, under the terms of Act 155 of 1959, all practices which affect freedom of competition in markets and are considered illegal under the Civil Code are prohibited.

Prohibited practices and their definitions

Arrangements (Decree 2153 of 1992, article 47). The Decree applies to all contracts, agreements, concertations, concerted practices or deliberately similar practices followed or entered into by two or more entrepreneurs. Those contrary to free competition include the following:

- Practices whose purpose or effect is direct or indirect price fixing;
- Practices whose purpose or effect is to establish conditions of sale or marketing which are discriminatory vis-à-vis third parties;
- Practices whose purpose or effect is the sharing of markets among producers or distributors;
- Practices whose purpose or effect is the allocation of production or supply quotas;
- Practices whose purpose or effect is the assignment, sharing or limiting of sources of supply of production inputs;
- Practices whose purpose or effect is to limit technical development;
- Practices whose purpose or effect is making the supply of a product contingent on the acceptance of additional obligations which by their nature bear no relation to the purpose of the transaction, without prejudice to any other provisions in that regard;
- Practices whose purpose or effect is a refusal to produce a product or service or to influence their levels of production;
- Practices whose purpose or effect is to bring about collusion in bidding or tendering or which has the effect of distributing contract awards, bid rigging or fixing the terms of offers.

Acts (Decree 2153 of 1992, article 48). The Decree applies to all behaviour by persons practising an economic activity which:

- Infringes the legal provisions on advertising contained in the consumer protection regulations;
- Exerts influence on a company to make it raise the prices of its products or services or to discourage it from carrying out its intention to reduce its prices;

- Involves refusal to sell or furnish services to a company, or to discriminate against it, when such action may be considered as retaliation against that company's price policy.

The following practices constitute abuse of a dominant market position where the latter exists (Decree 2153 of 1992, article 50):

- A lowering of prices below cost if the intention is to eliminate one or more competitors or to prevent the entry or expansion of competitors;

- The application of discriminatory conditions for equivalent transactions, thereby placing a consumer or a supplier at a disadvantage vis-à-vis another comparable consumer or supplier;

- Practices whose purpose or effect is to make the supply of a product contingent on the acceptance of additional obligations which by their nature bear no relation to the purpose of the transaction, without prejudice to any other provisions in that regard;

- Sale to one purchaser on conditions different from those offered to another purchaser where the intention is to reduce or eliminate competition in the market;

- The sale or supply of services in one part of the country at a price different from that offered in another part of the country, where the intention or effect is to reduce or eliminate competition in that part of the country and the price is not in keeping with the cost structure of the transaction concerned.

D. Description of the scope of application of the legislation

The Law and the Decree are applicable to all public and private companies carrying on entrepreneurial activities - firstly, because the Law makes no distinction between the two types of company; and secondly, because the Decree specifically stipulates that the Superintendent's terms of reference provide for supervision of all entities carrying on economic activity, irrespective of the type of activity or the legal character of the entity carrying on that activity.

General supervision is exercised to guarantee free competition in national markets, without prejudice to the powers assigned in current legislation to other authorities, such as the Household Public Services, which, under Law 140 of 1993, is the tutelary body of the Public Services Supervisory Board. In the financial sector, under Decree-Law 663 of 1992 and Decree 2159 of 1995, responsibility for supervision and control lies with the Banking Supervisory Board.

The Decree, while prohibiting all practices contrary to freedom of competition, specifically excepts agreements to further research and

development activities, agreements on compliance with rules, standards and measures and agreements relating to the use of procedures, methods and systems.

E. Description of the enforcement machinery (administrative or judicial), indicating any notification and registration agreements and the principal powers of the body or bodies concerned

The Office of the Supervisor for Industry and Trade is a technical body attached to the Ministry of Economic Development. It enjoys administrative, financial and budgetary autonomy for the purposes of the functions assigned to it. The latter include:

- Ensuring compliance with the provisions concerning the promotion of competition and on restrictive trade practices in the domestic market, without prejudice to the powers assigned to other authorities under current legislation; receiving complaints concerning matters affecting competition in the markets and taking action on those which are of significance, in pursuance, inter alia, of the following ends: improving the efficiency of national production system; ensuring that consumers have free choice and access to the markets for goods and services; ensuring that enterprises can operate freely in the markets; and ensuring that there is a variety of prices and qualities of goods and services available;

- Imposing the appropriate penalties for breaches of the regulations concerning restrictive practices and the promotion of competition and for failure to comply with the instructions given by the Office in the performance of its duties;

- Making inspection visits to verify compliance with the legal provisions for which it has supervisory responsibilities and taking appropriate measures as required by law;

- Advising the central Government, and participating in the framing of policies, on all subjects relevant to consumer protection, the promotion of competition and industrial property and other areas within the ambit of its functions;

- Explaining to the entities with which it has dealings how to comply with the legal provisions relating to the areas mentioned in the previous paragraph, establishing benchmarks to facilitate compliance and indicating procedures for full implementation;

- Where considerations of public interest make that course advisable, taking exclusive responsibility for investigations and the imposition of penalties for breaches of the regulations on price control and supervision.

Functions of the Supervisor of Industry and Trade (ibid. art. 4)

The Supervisor of Industry and Trade, as the head of his department, is required to perform the following functions:

- To ensure compliance by his department with the legal provisions relating to it, and the efficient performance of its technical and administrative functions;

- To ensure compliance with the provisions on the promotion of competition and on restrictive trade practices laid down in Act 155 of 1959, the provisions complementing it (and in particular those of the present Decree), by all entities carrying on economic activity, regardless of their legal form or nature, which fall within the ambit of the first paragraph of article 2 of the Decree;

- As a conservatory measure, to order the immediate discontinuance of practices which may prove contrary to the provisions referred to in the previous paragraph;

- To decide to terminate investigations into suspected infringements of the provisions referred to in paragraph 10 of this article when in his opinion the alleged offender provides sufficient guarantees that the practice which gave rise to the investigation will be discontinued or changed;

- To order offenders to change or discontinue practices contrary to the provisions on the promotion of competition and on restrictive trade practices referred to in this decree;

- To decide on mergers, consolidations, amalgamations and takeovers of companies;

- To impose fines of up to the equivalent of 2,000 times the legal minimum monthly wage in force at the time of imposition of the penalty for infringements of the provisions on the promotion of competition and on restrictive trade practices referred to in this Decree;

- To impose fines of up to 300 times the legal monthly minimum wage in force at the time of the imposition of the penalty on managers, directors, legal representatives, tax auditors and other natural persons who authorize, execute or tolerate practices which violate the rules on the promotion of competition and on restrictive trade practices referred to in this Decree. The fines are payable to the national treasury;

- To publicize the policies of his department.

Functions of the Manager of the Office for the Promotion of Competition (ibid. art. 11)

- To initiate preliminary inquiries, ex officio or at the request of a third party, into infringements of the provisions on the promotion of competition and on restrictive trade practice referred to in paragraph 10 of article 4 of the Decree;

- To decide on the admissibility of complaints received under the terms of the previous paragraph;

- To conduct preliminary inquiries and investigation proceedings seeking to establish whether infringements of the provisions concerning the promotion of competition and on restrictive trade practices referred to in Decree 2153 of 1992 have been committed;

- To keep a register of the investigations conducted, the penalties imposed and the commitments received as a result of the procedures relating to the provisions concerning the promotion of competition and on restrictive trade practices;

- To decide on appeals for reconsideration and applications for annulment of its decisions.

Functions of the Division for the Promotion of Competition (ibid., art. 12)

- To support the manager of the Office for the Promotion of Competition in the conduct of preliminary inquiries and investigations in cases concerning infringements of the provisions concerning the promotion of competition and on restrictive trade practices;

- To attend to complaints filed by individuals, and, if in that process possible violations of the rules on trade practices restricting competition are identified, to propose to the manager of the Office for the Promotion of Competition, if the importance of the behaviour or practice justifies it, to initiate the appropriate procedures;

- To give advice on request on matters falling within its competence;

- To examine applications for consolidations, amalgamations or mergers and takeovers in the manner prescribed by law;

- To prepare draft decisions comprising the imposition of penalties for violations of the rules concerning trade practices restricting freedom of competition;

- To conduct investigations undertaken to verify compliance with the regulations relevant to its field of competence;

- To obtain and keep up to date relevant information on the different domestic and international markets, classified under the technical coding;

- To prepare the economic and technical studies needed for the discharge of the functions of the Office of the Delegate for the Promotion of Competition;

- Other tasks which may be assigned to it and are relevant to its remit.

F. Description of any parallel or supplementary legislation, including treaties or understandings with other countries, involving cooperation or procedures for resolving disputes in the area of restrictive business practices

Decision 285 of the Commission of the Cartagena Agreement, signed in Lima (Peru) on 21 March 1991, contains regulations to prevent or correct distortions to competition caused by practices restrictive of free competition within the Andean Group, which consists of Bolivia, Colombia, Ecuador, Peru and Venezuela. The Free Trade Agreement between the Group of Three (G3), in paragraph (a) of article 16-03, provides for the creation of a Competition Committee with a specific mandate relating to subjects with a bearing on competition policies and trade in the free trade zone. The Committee is composed of representatives of the three G3 countries (Colombia, Mexico and Venezuela).

G. Description of the major decisions taken by administrative and/or judicial bodies, and the specific issues covered

Act 155 of 1959 laid down certain general premises requiring the preparation of a compendium of case law or of precise regulations specifying practices deemed to be anti-competitive. The subject being a new one, no compendium of case law exists in Colombia; it is hoped that one will be prepared in future years.

H. Short bibliography citing sources of legislation and principal decisions, as well as explanatory publications by Governments, or legislation, or particular parts thereof

Decree 2153 of 1992

Law 155 of 1959

Decree 1302 of 1964 (regulations to implement Law 155).

Hacia un nuevo régimen de promoción de la competencia/Bogotá, Chamber of Commerce, July 1993.

II. COMMENTARY BY THE GOVERNMENT OF JAPAN ON ITS ANTIMONOPOLY ACT

A. Reasons for the Introduction of Antimonopoly Legislation in Japan

In pre-Second World War Japan, economic power was concentrated in the huge "zaibatsu" (family-controlled combines) and lawful cartel organizations and the power was used to strengthen State control over economic activities. According to some commentators, this economic system impeded the sound development of the economy and society of Japan.

After the War, in order to develop the economic basis needed to support a democratic society, the industrial democratization policy, composed of specific measures including the dissolution of the zaibatsu, deconcentration of economic power and disbanding of private control bodies, was implemented. It was intended to create an institutional structure in which private firms would have equal opportunities to exercise their capabilities and engage in free competition. The Antimonopoly Act, proposed as a permanent measure for industrial democratization that would maintain fair and free competition among private firms for the future Japanese economy, was enacted in 1947.

B. Objectives of the Legislation

The Antimonopoly Act is aimed at promoting free and fair competition, stimulating the creative initiative of firms, encouraging the business activities of firms, raising employment levels and people's real income, and thereby promoting the democratic and wholesome development of the national economy as well as ensuring consumers' benefits. This Act sets forth the basic rules concerning business activities in order to maintain economic order in a free economic community (Section 1; hereinafter parenthesized numerals refer to pertinent sections and/or subsections of the Antimonopoly Act).

The Antimonopoly Act, to attain the above objectives, (1) prohibits private monopolization, unreasonable restraints of trade and unfair trade practices; (2) prevents excessive concentration of economic power; and (3) eliminates unjust restrictions of business activities.

C. Practices Subject to Control by the Antimonopoly Act

1. Unreasonable Restraint of Trade

The Antimonopoly Act provides that no firm shall carry out any unreasonable restraints of trade.

Unreasonable restraints of trade refer to cartels among firms. Cartels usually mean agreements or mutual understandings to fix prices and limit the volume of production and sales, among others.

"Unreasonable restraint of trade" shall be found when a firm,

1. by contract, agreement, or any other concerted activities,
2. mutually restricts or conducts its business activities with other firms,

3. in such a manner as to fix, maintain, or increase prices, or limit production, technology, products, facilities, or customers or suppliers,

4. thereby substantially restrains competition,

5. in any particular field of trade,

6. contrary to the public interest.

The Antimonopoly Act, in addition to prohibiting cartels as "unreasonable restraints of trade", has special provisions to prohibit unreasonable restraints of trade formed by trade associations and cartels between domestic and foreign firms (international cartels).

2. Monopoly and Oligopoly

If a small number of firms control almost the entire market, competition cannot function effectively. Consequently, regarding such monopoly or oligopoly, the Antimonopoly Act:

1. Prohibits conduct that excludes or controls the business activities of other firms and causes a substantial restraint of competition (prohibition of private monopolization) (Section 3);

2. Prevents the emergence of a situation whereby the effect of a merger and acquisition may be substantially to restrain competition in any particular field of trade (Sections 15-16); and

3. Provides for measures to restore competition when undesirable market performances exist in certain oligopolistic markets (Section 8-4).

In addition, the Act provides that the Fair Trade Commission may require submission of a report explaining the reasons for a price raise when parallel price increases occur in certain oligopolistic markets (Section 18-2).

3. Mergers and Acquisitions

Chapter IV of the Antimonopoly Act stipulates various restrictions on mergers and acquisitions. Thus, it prohibits stockholding by firms or other juridical entities, interlocking directorates in competing companies, and mergers of companies and acquisitions of business if the effect of such actions is to restrain competition substantially. Furthermore, in order to prevent excessive concentration of economic power, the Antimonopoly Act prohibits holding companies and limits the total amount of stockholdings by major non-financial firms and stockholdings by financial companies.

As for the prohibition of holding companies, from the viewpoint of promoting restructuring of enterprises and developing venture businesses, necessary reviews will be made and measures will be taken to lift the ban on holding companies, to the extent consistent with the antimonopoly policy. The

restriction on stockholdings by major non-financial firms will be studied to the extent that it is necessary in accordance with this review.

Filing of advance notifications with the Fair Trade Commission is mandatory regarding mergers and business acquisitions, and in the case of stockholding and interlocking directorates, post-factum notification and reporting are required.

See following Fair Trade Commission Guidelines on Merger and Stockholding:

1. Interpretations of the Application of the Provisions of Section 9 of the Antimonopoly Act with Respect to Venture Capital Firms (Fair Trade Commission, 23 August 1994)

2. Administrative Procedure Standards for Examining Stockholding by Companies (Fair Trade Commission, 11 September 1981, as amended)

3. Administrative Procedure Standards for Authorization of Stockholding by Financial Companies (Fair Trade Commission, 20 June 1994)

4. Administrative Procedure Standards for Examining Mergers, etc. by Companies (Fair Trade Commission, 15 July 1980, as amended)

5. Approach to Examination of Merger, etc. in the Retailing Sector (Fair Trade Commission, 24 July 1981)

4. Unfair Trade Practices

For the market mechanism to function and enhance the efficiency of the national economy, fair competition must take place by offering goods and services of high quality and at reasonable prices. In the light of this need, the Antimonopoly Act prohibits conduct which might impede fair competition as "unfair trade practices". Sixteen categories of conduct are defined as possible "unfair trade practices". The Fair Trade Commission may designate as "unfair trade practices" some activities in the categories which tend to impede fair competition (Section 2 (9)).

Some activities are designated under "general designation", which applies to all industries, while others are designated under "specific designation", which applies to specified industries such as the marine transportation industry and the department store industry.

The "general designation" cites the following 16 types of conduct as unfair trade practices ("Unfair Trade Practices", Fair Trade Commission Notification No. 15, 18 June 1982).

1. Concerted Refusal to Deal

Without proper justification, performing an act specified in one of the following paragraphs concertedly with another firm which is in a competitive relationship with oneself (hereinafter referred to as a "competitor"):

(i) Refusing to deal with a certain firm or restricting the quantity or substance of a commodity or service involved in the transaction with a certain firm; or

(ii) Causing another firm to perform an act which comes under the preceding paragraph.

2. Other Refusal to Deal

Unjustly refusing to deal, or restricting the quantity or substace of a commodity or service involved in the transaction with a certain firm, or causing another firm to perform any act which comes under one of these categories.

3. Discriminatory Pricing

Unjustly supplying or accepting a commodity or service at prices which discriminate between regions or between the other parties.

4. Discriminatory Treatment in Transaction Terms, etc.

Unjustly affording favourable or unfavourable treatment to a certain firm in regard to the terms or execution of a transaction.

5. Discriminatory Treatment in a Trade Association, etc.

Unjustly excluding a specific firm from a trade association or from a concerted activity, or unjustly discriminating against a specific firm in a trade association or a concerted activity, thereby causing difficulties in the business activities of the said firm.

6. Unjust Low Price Sales

Without proper justification, supplying a commodity or service continuously at a price which is excessively below the cost incurred in the said supply, or otherwise unjustly supplying a commodity or service at a low price, thereby tending to cause difficulties for the business activities of other firms.

7. Unjust High Price Purchasing

Unjustly purchasing a commodity or service at a high price, thereby tending to cause difficulties for the business activities of other firms.

8. Deceptive Customer Inducement

Unjustly inducing customers of a competitor to deal with oneself by causing them to misunderstand that the substance of a commodity or service supplied by oneself, or terms of the transaction, or other matters relating to such transaction are much better or more favourable than the actual one or than those relating to the competitor.

9. Customer Inducement by Unjust Benefits

Inducing customers of a competitor to deal with oneself by offering unjust benefits in the light of normal business practices.

10. Tie-in Sales, etc.

Unjustly causing the other party to purchase a commodity or service from oneself or from a firm designated by tying it to the supply of another commodity or service, or otherwise coercing the said party to deal with oneself or with a firm designated by oneself.

11. Dealing on Exclusive Terms

Unjustly dealing with the other party on condition that the said party shall not deal with a competitor, thereby tending to reduce transaction opportunities for the said competitor.

12. Resale Price Maintenance (Restriction)

Supplying a commodity to the other party which purchases the said commodity from oneself while imposing, without proper justification, one of the restrictive terms specified below:

(i) Causing the said party to maintain the sales price of the commodity that one has determined, or otherwise restricting the said party's free decision on sales prices of the commodity; or

(ii) Having the said party cause a firm which purchases the commodity from the said party to maintain the sales price of the commodity that one has determined, or otherwise causing the said party to restrict the said firm's free decision on the sales price of the commodity.

13. Dealing on Restrictive Terms

Other than any act coming under the preceding two paragraphs, dealing with the other party on conditions which unjustly restrict any transaction between the said party and the other transacting party or other business activities of the said party.

14. Abuse of Dominant Bargaining Position

Performing any act specified in one of the following paragraphs unjustly in the light of the normal business practices, by making use of one's dominant bargaining position in relation to the other party:

(i) Causing the said party in continuous transaction to purchase a commodity or service other than the one involved in the said transaction;

(ii) Causing the said party in continuous transaction to provide for oneself money, service or other economic benefits;

(iii) Setting or changing transaction terms in a way disadvantageous to the said party;

(iv) In addition to any act coming under the preceding three paragraphs, imposing a disadvantage on the said party regarding the terms or execution of a transaction; or

(v) Causing a company which is one's other transacting party to follow one's direction in advance, or to secure one's approval, regarding the appointment of officers of the said company (meaning those as defined by Subsection 3 of Section 2 of the Act Concerning Prohibition of Private Monopoly and Maintenance of Fair Trade [the Antimonopoly Act]).

15. Interference with a Competitor's Transaction

Unjustly interfering with a transaction between another firm which is in a competitive relationship in Japan with oneself or with the company of which one is a stockholder or an officer and its other party to such transaction, by preventing the formation of a contract, or by inducing the breach of a contract, or by any other means whatsoever.

16. Interference with the Internal Operation of a Competing Company

Unjustly inducing, abetting, or coercing a stockholder or an officer of a company which is in a competitive relationship in Japan with oneself or with a company of which one is a stockholder or an officer, to perform an act disadvantageous to such company by the exercise of voting rights, transfer of stock, divulging of secrets, or any other means whatsoever.

These conducts can be classified into three broad categories:

1. Conduct which may restrain free competition: refusal to deal, discriminatory pricing, discriminatory treatment in transaction terms, resale price maintenance, etc.

2. Competition which in itself cannot be considered fair: inducement of customers by deceptive methods or offers of excessive premiums, tying arrangements, etc.

3. Conduct of large firms forcing unreasonable demands on clients by taking advantage of dominant bargaining positions: abuse of dominant bargaining position, etc.

Some of these practices are illegal in principle, such as resale price maintenance, whereas in the case of others it is determined on a case-by-case basis whether they are impeding fair competition.

The "specific designation" activities are limited by their terms to particular industries and employed by the Fair Trade Commission where very specific rules are warranted resulting from particular situations or other special factors in an industry.

5. Activities of Trade Associations

"Substantially restraining competition in any particular field of trade" by any trade association, which is a combination or federation of combinations of two or more firms, is prohibited (Section 8).

In addition, trade associations are prohibited from limiting the number of firms in any particular field of business, unjustly restricting the functions or activities of member firms, or having firms perform acts that constitute unfair trade practices (Section 8).

See the Antimonopoly Act Guidelines Concerning the Activities of Trade Associations. (Fair Trade Commission, 30 October 1995)

6. Restrictive International Contracts, etc.

The Antimonopoly Act regulates anticompetitive conducts under agreements or contracts between Japanese and foreign firms (Section 6). First, it prohibits international agreements or contracts which involve unreasonable restraint of trade (i.e. participation in any international cartel). Also, it prohibits firms from entering into any international agreement or contract which contains matters that constitute unfair trade practices.

D. Scope of the Legislation

1. Exemptions

The Antimonopoly Act applies to all industries. However, the following fields and acts are exempted from application of the Act:

1. Natural Monopoly (Section 21: "Such acts relating to the production, sale, or supply as are done in the proper course of business by a person engaging in railway, electricity, gas, or any other business constituting a monopoly by the inherent nature of the said business.")

2. Acts under intangible property rights (Section 23: "Such acts recognizable as the exercise of rights under the Copyright Act, the Patent Act, the Utility Model Act, the Design Act or the Trademark Act.")

3. Certain acts of cooperatives (including a federation of cooperatives) such as the agricultural cooperative and the consumer cooperative (Section 24)

4. Exempted Cartels

In principle, the Antimonopoly Act prohibits cartels by firms and trade associations; however, certain cartels are exempted from the Act if they meet specified conditions provided by law. Special provisions permitting such exemptions are set forth not only in the Antimonopoly Act itself, but also separately in individual laws such as the Small and Medium Sized Enterprises

Organization Act. As a rule, the formation of exempted cartels requires notification to, or authorization by, the Fair Trade Commission or the relevant authorities.

Even in the areas where exemption cartels are allowed, the Antimonopoly Act will be applied to those cases in which unfair trade practices are employed, or competition in any particular field of trade is substantially restrained, resulting in an unjust rise in prices.

Cartels currently exempted from the Antimonopoly Act are being reviewed by the relevant ministries and agencies from the standpoint of abolishing them in principle.

5. Exemption of Resale Price Maintenance

The Fair Trade Commission may designate commodities by a notification as to which resale price maintenance can be permitted (Section 24-2(1)). Resale price maintenance for copyrighted works is also permitted in the Antimonopoly Act (Section 24-2(4)).

In order for the Fair Trade Commission to designate, commodities should be for daily use by consumers in general and of uniform quality that can be easily identifiable. Free competition should exist with regard to commodities (Section 24-2(1)). Certain kinds of cosmetics and medicines sold "over the counter" are currently designated by the Fair Trade Commission. However, the Fair Trade Commission will take the necessary steps to revoke all exemptions granted to these items by the end of fiscal year 1997.

2. Geographical Scope

The Antimonopoly Act applies to conducts within Japan. It is applicable to conducts by firms resident outside Japan, as long as the conducts occur within Japan.

E. Description of the enforcement machinery

1. Organization

The Fair Trade Commission has exclusive authority to enforce the Antimonopoly Act.

The Fair Trade Commission is established as an administrative organ to implement the Antimonopoly Act and competition policy. The Fair Trade Commission, which is administratively attached to the Prime Minister, is positioned in the administrative organization of the State as an extraministerial body of the Prime Minister's Office; however, it exercises its authority independently without being directed or supervised by anyone else. The Fair Trade Commission is required to inform the Diet of its activities every year in an annual report.

The Fair Trade Commission consists of a Chairman and four Commissioners. The Chairman and the Commissioners are appointed by the Prime Minister, for five-year terms, with the consent of both Houses of the Diet. The status of

the Chairman and the Commissioners while in office is firmly guaranteed. The General Secretariat (staff office) executes the Commission's day-to-day operation.

2. Authority

As a administrative agency, the Fair Trade Commission has the power to conduct investigations with respect to any suspected Antimonopoly Act violations, to render a cease and desist order or to issue a complaint to initiate a hearing procedure, and to file a criminal accusation with prosecutors. It has a duty to receive various reports filed by anyone. It may authorize exemptions from application of the Antimonopoly Act such as depression cartels, rationalization cartels, or exceptional stockholdings upon a petition by related firms.

The Fair Trade Commission also has the character of a quasi-legislative and quasi-judicial organ.

As a quasi-legislative power, the Fair Trade Commission can establish the procedures for handling cases and for hearing procedures. It can determine the form of reports to be filed with it and any necessary attachments thereto. It also has a rule-making power to designate unfair trade practices and designate commodities for which resale price maintenance is permissible.

As a quasi-judicial power, the Fair Trade Commission will issue a decision after hearing procedures. If an illegal cartel pertaining to price has been formed, the Fair Trade Commission will impose surcharges to collect the unlawful gains from the firms involved, in addition to issuing an order to cease and desist. An appeal against the Fair Trade Commission's decision goes directly and exclusively to the Tokyo High Court.

The Fair Trade Commission also has the power to accuse individuals and corporations that are involved in major offences against the Antimonopoly Act and to file the cases with the Public Prosecutor's Office for indictment. A criminal procedure against any major offence under the Antimonopoly Act (offence under any part of sections 89-91) can be initiated only after an accusation is filed by the Fair Trade Commission with the Public Prosecutor General (section 96).

F. Description of Supplementary Legislations

1. Act Against Delay in Payment of Subcontract Proceeds, etc., to Subcontractors

This Act, abbreviated to the Subcontract Act, was enacted in 1956 as a special law to supplement the Antimonopoly Act. It aims at ensuring fair transactions between parent firms and subcontractors and protecting the interests of subcontractors, who are in weak positions economically, by promptly and effectively regulating the conduct of parent firms that abuse their dominant bargaining positions in subcontracting transactions.

The Subcontract Act regulates unfair trade practices in subcontracting transactions, such as parent firms' unreasonable refusal of acceptance (of goods), unreasonable reductions of payments due to subcontractors, unreasonable delay in payment of subcontract proceeds, unreasonable return of goods, unreasonable beating down of prices, unreasonable coercion to buy, and payment in bills difficult to discount.

2. Act Against Unjustifiable Premiums and Misleading Representations

The Premiums and Misrepresentations Act (the Act Against Unjustifiable Premiums and Misleading Representations), a special law that supplements the Antimonopoly Act, was enacted in 1962 to protect the interests of general consumers by ensuring fair competition. It regulates offers of excessive premiums and misleading advertising promptly and effectively, among unjustifiable conduct to induce customers, as prohibited under the Antimonopoly Act as unfair trade practices.

This Act, besides prohibiting offers of excessive premiums which are harmful, forbids advertising which could mislead general consumers into believing that the contents of goods or services, or the conditions of transaction, are significantly good or advantageous to them (misleading advertising). If any such violation is detected, the Fair Trade Commission will issue a cease and desist order.

From 1972 onwards, part of the authority to take measures against violations of the Act was entrusted to prefectural governors, and the Act is now partly enforced by prefectural governments. They may give the necessary instruction against violations of the Antimonopoly Act.

Furthermore, to prevent violations such as sales with offers of excessive premiums or by misleading advertising, firms or trade associations can promulgate Fair Competition Codes, which become their autonomous rules, subject to approval by the Fair Trade Commission.

G. Major cases

1. Chemical Companies Cartel Case

The Chemical Companies Cartel Case is one of the most serious criminal cases in recent years.

The Fair Trade Commission found that eight chemical companies had jointly decided to effect, and had actually implemented, an increase in the sales price of polyvinyl chloride stretch films for industrial use, starting with the shipments in September and November 1990. As these companies were suspected of having engaged in a criminal violation of section 3 (unreasonable restraint of trade) of the Antimonopoly Act, the Fair Trade Commission on 6 November 1991 filed criminal accusations with the Prosecutor General against eight companies as well as eight officials in charge of marketing in these companies, and again on 19 December 1991 against seven officials in charge of marketing in seven companies. The accused eight companies and 15 officials were indicted on 20 December of the same year.

Besides criminal procedure, the Fair Trade Commission on 8 January 1992 concluding that this case was a violation of section 3 of the Antimonopoly Act, issued a decision (cease and desist order) (Fair Trade Commission Decision, 8 January 1992, Shinketsushu, vol. 38, p. 150 (1991)). The Fair Trade Commission on 26 March 1992 also issued orders to eight companies to pay surcharges totalling 449,780,000 yen (Fair Trade Commission Surcharge Payment Order, 26 March 1992, Shinketsushu, vol. 38, p. 265 (1991)).

On 21 May 1993, the Tokyo High Court found the defendants guilty. The companies were fined 6-8 million yen and individuals were sentenced to 6-12 months' imprisonment with a stay of execution for two years (Tokyo High Court Decision, 21 May 1993, Hanreijiho, No. 1474, p. 31 (1994)).

2. Cases against dealers in electrical household appliances

Matsushita Electronics Co., Ltd., Hitachi Home Appliances Co., Ltd., Sony Network Sales Co., Ltd., and Toshiba East Japan Life Electronics Co., Ltd. (which were dealers selling from 25 to 100 per cent of the electrical household appliances made by Matsushita, Hitachi, Sony and Toshiba respectively) were separately found to be in violation of section 19 (prohibition of unfair trade practices) of the Antimonopoly Act for demanding that discount retailers, in regard to the selling of newly introduced consumer electronic goods, not quote prices below a certain level in newspaper flier advertisements and storefront price labelling. The Fair Trade Commission issued a decision (cease and desist orders) on 8 March 1993 (Fair Trade Commission Decision, 8 March 1993, Shinketsushu, vol. 39, pp. 236/241/246/251).

H. Bibliography

1. Japanese antimonopoly legislation

- Act Concerning Prohibition of Private Monopoly and Maintenance of Fair Trade (Antimonopoly Act) (Act No. 54 of 14 April 1947)

- Act against Delay in Payment of Subcontract Proceeds, etc. to Subcontractors (Act No. 120 of 1 June 1956)

- Act against Unjustifiable Premiums and Misleading Representations (Act No. 134 of 15 May 1962)

- Unfair Trade Practices (Fair Trade Commission Notification No. 15 of 18 June 1982)

2. Main guidelines issued by Fair Trade Commission

- Administrative Procedure Standards for Examining Mergers, etc. by Companies (Fair Trade Commission, 15 July 1980, as amended)

- Approach to Examination of Merger, etc. in the Retailing Sector (Fair Trade Commission, 24 July 1981, as amended)

- Administrative Procedure Standards for Examining Stockholding by Companies (Fair Trade Commission, 11 September 1981)

- The Antimonopoly Act Guidelines Concerning Distribution Systems and Business Practices (Fair Trade Commission, 1 July 1991)

- Administrative Procedure Standards for Authorization of Stockholding by Financial Companies (Fair Trade Commission, 20 June 1994)

- The Antimonopoly Act Guidelines Concerning Administrative Guidance (Fair Trade Commission 30 June 1994)

- The Antimonopoly Act Guidelines Concerning the Activities of Firms and Trade Associations in Relation to Public Bids (Fair Trade Commission, 5 July 1994)

- Interpretations of the Application of the Provisions of section 9 of the Antimonopoly Act with Respect to Venture Capital Firms (Fair Trade Commission, 23 August 1994)

- The Antimonopoly Act Guidelines Concerning the Activities of Trade Associations (Fair Trade Commission, 30 October 1995)

3. Explanatory publications and booklets

(1) FTC Japan/Views (Fair Trade Commission) An official bulletin that will provide up-to-date information on the policies and enforcement of the Fair Trade Commission

(2) Antimonopoly Act Guidebook (Fair Trade Commission) A pamphlet that provides a rough sketch of the Japanese Antimonopoly Act

(3) The Antimonopoly Laws and Policies of Japan (H. Iyori and A. Uesugi; Federal Legal Publications Inc.)

(4) Introduction to Japanese Antimonopoly Law (Mitsuo Matsushita with John D. Davis; Yuhikaku)

III. COMMENTARY BY THE GOVERNMENT OF SOUTH AFRICA ON SOUTH AFRICAN COMPETITION LEGISLATION

1. Description of the reasons for the introduction of the legislation 1/

The historical background to current (1997) competition legislation may be described as follows:

Prior to 1955 the legislation regarding anti-competitive practices was of an incidental and fragmentary nature, and the common law, which followed British law, proved largely ineffective. At the time, the court's ineptness to cope effectively with monopoly problems in the absence of adequate legislation was described in the *South African Journal of Economics* (Cowen, D. V., "A survey of the law relating to the control of monopoly in South Africa", June 1950) as follows: "The failure of the criminal branch of our law to control monopoly put the whole burden of protecting the public upon the civil or private branches, namely the law of contract, and, to a lesser extent, the law of tort or delict. Experience has proved, however, that this is a task which these branches of the law are not fitted to bear ... the net effect of the civil law is to facilitate the path of the monopolist and to leave the interests of the general public very much in the air".

In 1949 the Undue Restraint of Trade Act (No. 59 of 1949) was passed which, inter alia added a specific administrative procedure to deal with resale price maintenance and with other types of activities (such as combinations or trusts) which placed restraints on trade.

In 1955 the first proper piece of competition law was put in place with the passing of the Regulation of Monopolistic Conditions Act, 1955 (Act No. 25 of 1955). This Act was based on the following guiding principles:

- the wholesale condemnation of monopolistic tendencies is unrealistic and not justified (the advocacy of an ad hoc rather than a per se approach);
- market structure is not in itself a measure of economic effect;
- control should be entrusted to expert bodies rather than the courts;
- restrictive agreements should be controlled, not prohibited;
- large businesses or business groups should not be subject to dissolution;
- legal barriers to entry may cause monopolistic conditions and should be studied by the body responsible for administering trade practices policy; and
- State enterprises should be subject to the same monopoly control as private firms.

Competition policy within South Africa was administered in terms of this Act, which became law on 1 January 1956 and remained in place until 31 December 1979. It was regarded as the first comprehensive legislation for the regulation of anti-competitive behaviour in the country. However, in spite of recommendations that the Act be amended to include investigations into acquisitions and mergers, its scope remained narrowly defined to the control of anti-competitive practices.

The provisions of the 1955 Act did not apply to rights received in terms of the immaterial property rights acts, agreements between labour organizations and employers and the regulatory agricultural marketing and/or control board.

The Act was an enabling Act. The competent authority, the Board of Trade and Industry (BTI), was empowered to undertake investigations on the instructions of the responsible Minister. He, in turn, was empowered to either accept or reject the recommendations of the BTI.

A number of investigations were undertaken, the most significant being an investigation into resale price maintenance which gave rise to a general prohibition of this practice in 1968.

In 1975, the Government appointed a Commission to inquire into, to report on and to submit recommendations regarding the amendment of the 1955 Act. In particular, the Commission was instructed to report on existing and future concentrations of economic power as well as the efficacy of that Act as an instrument to ensure competition in the national economy.

In its 1977 report, 2/ the Commission recommended a major revamp of the existing dispensation to add more emphasis to competition policy. As a result of the recommendations contained in this report, a new piece of legislation was introduced which came into effect on 1 January 1980. This Act, the Maintenance and Promotion of Competition Act, 1979 (Act. No. 96 of 1979), remains in force today, although a number of amendments have been made to it to widen its scope and application.

The key characteristic of the Act is that it is an enabling act, with no restrictive practices or economic structures or acquisitions being prohibited per se. It merely sets a framework in terms of which these aspects of competition law may be addressed on an ad hoc basis. It is administered by a separate statutory authority, the Competition Board.

B. Objectives of the legislation and the extent to which they have evolved since the introduction of the original (1979) legislation

The objectives of the Act may be gleaned from the short title of the Maintenance and Promotion of Competition Act, 1979 ("the Competition Act") namely, to provide for the maintenance and promotion of competition in the economy, for the prevention or control of restrictive practices, acquisitions and monopoly situations, and for matters connected therewith.

The "Report of the Commission of Inquiry into the Regulation of the Monopolistic Conditions Act, 1955", referred to in the opening paragraphs, identified the following objectives and principles of competition policy:

- A competition policy based on free enterprise, embracing the total economy, is essential for achieving the country's overall economic objectives, such as the optimum utilization of economic resources, the creation of employment, improving the balance of payments and stimulating economic growth.

- The need for cooperation between the public and private sectors is considered to be essential in achieving these objectives.

- Legislation should be structured to protect the economy and thus the public interest from abuse or misuse of economic power and should provide the appropriate sanctions.

In accepting the Commission's recommendations that existing concentrations of economic power should not be condemned, the Competition Act in its 1979 form did not include any reference to such concentrations. However, the Competition Act did provide that acquisitions and mergers which were anti-competitive (and could give rise to greater economic concentrations) could be investigated and prohibited.

The 1979 version of the Competition Act excluded investigations into restrictive practices and acquisitions in the financial and agricultural sectors of the economy without the express approval of the relevant Ministers responsible for these two sectors. Moreover, the provisions of the Competition Act could not be construed as limiting the rights acquired in terms of the various immaterial property acts, excepting as so far as it could not be construed that any person would retain or be granted any right of maintaining or enhancing prices or any other consideration in a manner contemplated in the definition of a restrictive practice.

As a general rule, restrictive practices taken up in other Acts of Parliament are immune from action in terms of the Competition Act. For this reason, an advocacy function is included in section 6 of the Competition Act to provide for the coordination of competition policy by the Competition Board.

A number of significant changes have been made to the Competition Act. In 1985 the restriction relating to the agricultural and financial sectors of the market was removed. In 1986 the Act was amended to allow for the investigation of monopoly situations, although the wording of the Act is such that such situations (in practice, dominant positions) are deemed to be in the public interest (whereas a rebuttable presumption exists that restrictive practices and acquisitions 3/ are against the public interest).

In 1990, the definition of a restrictive practice was rephrased to allow for greater clarity.

C. Description of the practices, acts or behaviour subject to control

Restrictive practices

Provision is made in the Competition Act for general prohibitions (per se) as well as for ad hoc or case-by-case prohibitions. Although the Act itself contains no prohibitions, provision is made in section (10 (1) for investigations which could give rise to ad hoc or per se prohibitions.

In 1986 (Government Notice 801 of 1 May 1986 published in *Government Gazette* No. 10211) five collusive practices involving suppliers were prohibited per se, namely:

- vertical price collusion (resale price maintenance);
- horizontal price collusion;
- horizontal collusion on conditions of supply;
- horizontal collusion on market sharing; and
- collusive tendering.

However, provision was made for the granting of exemptions from any one, or more, of the prohibitions, whilst certain forms of collusion are excluded from the prohibitions. Such exclusions include:

- vertically recommended resale prices;
- collusion between wholly owned subsidiaries; and
- collusion on exports beyond the borders of the Southern African Customs Union.

It is important to note that the prohibition applies to professionals. However, the prohibition has been worded in such a way that professional associations may recommend tariffs of fees and conditions of supply to their members.

A number of ad hoc prohibitions affecting specific parties or applicable to certain specific industries have also been published. The types of practices which have typically been prohibited include:

- unjustifiable refusals to deal;
- tying arrangements;
- boycott actions by suppliers;
- price leadership (conscious parallelism);
- certain agreements between suppliers and customers which effectively restricted entry into markets;

- certain activities of trade associations (in particular where membership of certain trade associations was a prerequisite to do business);

- discriminatory pricing polices; and

- collusive purchases.

Acquisitions and mergers

Acquisitions and mergers between competitors are handled on a case-by-case basis. Although no notification procedure is currently in place, parties to proposed acquisitions regularly consult with the Competition Board to obtain clearance for these transactions. In certain instances the Board would give clearance without reverting to a formal investigation in terms of the Competition Act. 4/

Consumer protection is not a facet of current South African competition law. The Harmful Business Practices Act, 1988 supplies a framework similar in scope and application to the Competition Act to address consumer-related business practices. Aspects such as misleading advertizing, and pyramid selling would be addressed in terms of this act.

(It will be noted that the majority of the practices, acts or behaviour identified in Section D, paragraphs 3 and 4, of the Set of Principles and Rules have been included in South African competition law.)

The Competition Act, being of an enabling nature, relies on a recommendation by the Competition Board to that effect, and the acceptance of the said recommendation by the Minister of Trade and Industry, for a particular restrictive practice or acquisition or merger to be prohibited. Provision is made for appeals to a special court against decisions by the Minister to prohibit certain actions. Such appeals have to be lodged within six weeks of a prohibition being published in the *Government Gazette*.

The legal process also provides that parties affected by prohibitions may challenge the validity of the said prohibitions in the courts.

D. Scope and application of the legislation

(a) The definition of a "commodity" in the Competition Act includes any make or brand of any commodity, any book, periodical, newspaper or other publication, any building or structure and any service, whether personal, professional or otherwise, including any storage, transportation, insurance or banking service.

(b) The Act is applied in such a way that any activity which may have an effect on competition within the boundaries of South Africa may be targeted for attention.

(c) The law applies to any agreement, understanding, business practice or method of trading, irrespective of whether the agreement etc. has been put into effect.

Any anti-competitive behaviour which is legislated for in terms of a specific act of parliament cannot be addressed in terms of the competition law instrument. Many such examples exist in the South African economy. The plethora of laws governing professionals (such as medical practitioners, pharmacists, attorneys, architects, engineers) contain many restraints on competition. In a similar vein, many agricultural products are controlled (although this is changing rapidly) with, for example, fixed or minimum or maximum prices, central marketing councils, and surplus removal schemes. The price of petrol is controlled.

Although there has been a fairly widespread liberalization of business licences and business hours, many restraints on entry into markets remain in place. These restraints have to be addressed in terms of the Competition Board's advocacy function, and not the competition law instrument.

E. Enforcement mechanisms

The enforcement of competition law in South Africa rests with the South African Police Service and the Attorneys-General. Maximum penalties are R 100,000 (approximately US$ 22,000) or five years' imprisonment, or both.

F. Parallel or supplementary legislation

Mention has already been made of the Harmful Business Practices Act, 1988. Three industry regulators exist, namely in the telecommunications, electricity supply and airports industries. They have been specifically instructed to monitor anti-competitive conduct within the specific industries, whilst the Competition Board has concurrent jurisdiction in certain instances.

There are no treaties or understandings with other countries involving cooperation or procedures for resolving disputes in the area of restrictive business practices. On the contrary, in many instances, they either condone or instigate anti-competitive practices.

G. Major decisions taken

The most important recommendations by the Competition Board to be accepted by the Government revolved around the general prohibition on collusion (1986). During the Board's 17 years as the body responsible for administering the competition law, the Government has rarely rejected its recommendations. In one instance, the Minister rejected the Board's recommendation that a particular acquisition in the hosiery industry be put aside, and the Government also rejected certain recommendations by the Board relating to the liquor industry in 1983.

In terms of its advocacy function, the board was tasked in the early 1980s, with conducting investigations into the abolition of price controls over a large variety of commodities. Its recommendations that the controls be abolished were accepted in every instance. These investigations specifically related to the price controls exercised in terms of the Price Control Act, 1964 and did not include investigations into regulatory controls over prices in terms of other legislation (such as agriculture, gasoline, sugar and wine). 5/

H. **Bibliography**

(a) The principal act is the Maintenance and Promotion of Competition Act, 1979; Government Printer.

(b) Collusion (cartelization or concerted action by suppliers) is prohibited in Government Notice No. 801 in *Government Gazette* No. 10211 of 2 May 1986; Government Printer.

(c) Competition Board Report No. 15, "Investigation into collusion on prices and conditions, market sharing and tender practices", 1995; Competition Board, Private Bag X720, Pretoria 0001, South Africa. (This investigation gave rise to the general prohibition on collusion and resale price maintenance.)

(d) Competition Board Report No. 22, "Investigation into restrictive practices and monopoly situations in the gypsum industry"; Competition Board, Private Bag X720, Pretoria 0001, South Africa. (This investigation gave rise to a prohibition on unjustifiable refusal to deal and discriminatory pricing in the gypsum industry.)

(e) Competition Board Report No. 26, "Investigation into restrictive practices in the distribution of pre-recorded video tapes to video-hire stores"; Competition Board, Private Bag X720, Pretoria 0001, South Africa. (This investigation gave rise to a prohibition on discriminatory pricing and tying in the video industry, taking the immaterial property element into account.)

(f) Competition Board Report No. 30, "Investigation to determine whether the purchase of additional shares in Goldfields of South Africa Ltd by Anglo-American Corporation of South Africa Ltd and De Beers Consolidated Mines Ltd or their associated companies since June 1989 constitutes a restrictive practice or acquisition or gives rise to a monopoly situation"; Competition Board, Private Bag X720, Pretoria 0001, South Africa. (This investigation concentrated on a number of complex issues and set forth the Competition Board's approach to monopoly situations, acquisitions, restrictive practices and interlocking directorates in rival firms, drawing extensively on international experience in the field.)

(g) Competition Board Report No. 46, "Investigation into whether the current service station rationalization plan involving the Department of Mineral and Energy Affairs, the respective oil companies operating in South Africa, and the Motor Industries' Federation, constitutes a restrictive practice"; Competitive Board, Private Bag X720, Pretoria 0001, South Africa. (This investigation focused on the regulatory environment in which the liquid fuels industry operates, price controls and restrictive practices.)

(h) Competition Board Report No. 52, "Investigation to determine whether any restrictive practices as defined in Section 1 of the Maintenance and Promotion of Competition Act, 1979 (Act No. 96 of 1979) exists or may come into existence in the supply and distribution of medicine in the Republic of South Africa"; Competition Board, Private Bag X720, Pretoria 0001, South Africa. (This investigation focused on restrictive practices in the

health-care field, with special reference to the distribution of medicine at retail level in the context of preferred provider networks.)

(i) Competition Board Annual Reports; Competition Board, Private Bag X720, Pretoria 0001, South Africa.

(j) Various other reports by the Competition Board; Competition Board, Private Bag X720, Pretoria 0001, South Africa.

(k) "Report of the Commission of Inquiry into the Regulation of the Monopolistic Conditions Act, 1955"; Competition Board Private Bag X720, Pretoria 0001, South Africa.

Notes

1/ Taken from the "Report of the Commission of Inquiry into the Regulation of the Monopolistic Conditions Act, 1955", dated March 1997, Chap. 1.

2/ See note 1.

3/ An acquisition as defined in the Competition Act has a narrow focus in that it concentrates on horizontal mergers or acquisitions (that is, between competitors) which are likely to have the effect of restricting competition directly or indirectly. It does not focus on vertical or conglomerate acquisitions, even when these are anti-competitive. Such transactions are, perforce, handled in terms of their being potential restrictive practices.

4/ A "formal" investigation denotes an investigation of which notice has been given in the *Government Gazette*, this being a prerequisite before action may be taken by the Minister of Trade and Industry, acting on the recommendation of the Competition Board, to prohibit the acquisition.

5/ Sugar and wine are controlled in terms of their own acts, whilst other agricultural products were - historically - controlled in terms of the (Agricultural) Marketing Act, 1978.

Annex I

COLOMBIA

Ley 155 de 1959

Por la cual se dictan algunas disposiciones sobre practicas comerciales restrictivas.
(De 24 de diciembre de 1959)

Art.1. Prohibición de acuerdos o practicas contra la libre competencia.

Art.2. Vigilancia de empresas en posición de determinar los precios.

Art.3. Normalización de los productos.

Art.4. Obligación de notificación de fusiones.

Art.5. Incompatibilidad de los directivos (art.7° de la Ley 50 de 1947).

Art.6. Incompatibilidad de los vínculos personales entre competidores.

Art.7. No competencia desleal entre venta directa y venta por independiente.

Art.8. No monopolización de la distribución.

Art.9. Respeto de los precios de venta al publico.

Art.10. Definición de competencia desleal.

Art.11. Lista de hechos de competencia desleal.

Art.12. Investigaciones de oficio o por denuncia.

Art.13. Obtención de las pruebas, acta de conclusiones y formulacion de descargos.

Art.14. Sanciones y multas.

Art.15. Recurso de apelación contra la resolución del director ejecutivo.

Art.16. Suspensión de la ejecución de la sanción.

Art.17. Intervención del Ejecutivo en la fijación de los precios como garantía al consumidor.

Art.18. Control de los revisores al cumplimiento de la Ley.

Art.19. Nulidad de los acuerdos ilícitos.

Art.20. Entrada en vigor de la Ley.

LEY 155 DE 1959

(Diciembre 24)

Por la cual se dictan algunas disposiciones sobre prácticas comerciales restrictivas.

El Congreso de Colombia

DECRETA:

Artículo 1°. Modificado: Artículo 1 Decreto 3307 de 1963. Quedan prohibidos los acuerdos o convenios que directa o indirectamente tengan par objeto limitar la producción, abastecimiento, distribución o consumo de materias primas, productos, mercancías o servicios nacionales o extranjeros y, en general, toda clase de prácticas, procedimientos o sistemas tendientes a limitar la libre competencia y a mantener o determinar precios inequitativos.
Parágrafo. El Gobierno, sin embargo, podrá autorizar la celebración de acuerdos o convenios que no obstante limitar la libre competencia, tengan por fin defender la estabilidad de un sector básico de la producción de bienes o servicios de interés para la economía general (Decreto 1302 de 1964, Artículo 10).

Artículo 2°. Las empresas que produzcan, abastezcan, distribuyan o consuman determinado artículo o servicio, y que tengan capacidad para, determinar precios en el mercado, por la cantidad que controlen del respectivo artículo o servicio, estarán sometidas a la vigilancia del Estado para los efectos de la presente ley.

Artículo 3°. El Gobierno intervendrá en la fijación de normas sobre pesas y medidas, calidad, empaque y clasificación de los productos, materias primas y artículos o mercancías con miras a defender el interés de los consumidores y de los productores de materias primas.

Artículo 4°. Las empresas que se dediquen a la misma actividad productora, abastecedora, distribuidora o consumidora de un artículo determinado, materia prima, producto, mercancía o servicios cuyos activos individualmente considerados o en conjunto asciendan a veinte millones de pesos ($20.000.000) o más, estarán obligadas a informar al Gobierno Nacional de operaciones que proyecten llevar a cabo para el efecto de fusionarse, consolidarse a integrarse entre si, sea cualquiera la forma jurídica de dicha consolidación, fusión o integración.

Parágrafo 1°. El Gobierno Nacional deberá objetar la operación, previo concepto del Consejo Nacional de Política Económica y Planeación, si tiende a producir una indebida restricción a la libre competencia (Decreto 1302 de 1964, Artículo 5°).
Parágrafo 2°. Si pasados treinta (30) días de haberse presentado el informe de que trata este artículo, no se hubiere objetado par el Gobierno la operación, los interesados podrán proceder a realizarla (Decreto 1302 de 1964, Artículo 6°).
Parágrafo 3° El informe que deben dar los interesados y su trámite serán absolutamente reservados y los funcionarios que revelen en todo o en parte el contenido de los expedientes, incurrirán en la destitución del empleo que impondrá el respectivo superior, sin perjuicio de las demás sanciones establecidas en el Código Penal (Código Penal, Artículos 154, 155).

Artículo 5°. Entiéndese la incompatibilidad establecida en el artículo 7° de la Ley 5o de 1947 para los miembros de las juntas directivas y los gerentes de establecimientos de crédito y bolsas de valores, a los presidentes, gerentes, directores, representantes legales, administradores y miembros de juntas directivas de empresas, cuyo objeto sea la producción, abastecimiento, distribución o consumo de las mismos bienes o la prestación de los mismos servicios, siempre y cuando tales empresas individual a conjuntamente consideradas, tengan activos par valor de veinte millones de pesos ($20.000.000) o más.
Parágrafo. La incompatibilidad establecida par el presente artículo no cobija a los presidentes, gerentes, representantes legales y administradores de las compañías de seguros que por exigencia de la ley deben constituir otras sociedades para operar en los ramos de seguros de vida, seguros generales y capitalización.

Artículo 6°. Los presidentes, gerentes, directores, representantes legales, administradores o miembros de juntas directivas de empresas industriales constituidas en forma de sociedades anónimas, no podrán distribuir por si ni por interpuesta persona los productos, mercancías, artículos o servicios

producidos par la respectiva empresa a sus filiales, ni ser socios de empresas comerciales, que distribuyan o vendan principalmente tales productos, mercancías, artículos o servicios.
Esta incompatibilidad se extiende a los funcionarios de sociedades de responsabilidad limitada que tengan como socios otras sociedades, en forma tal que el numero total de personas naturales exceda de veinte (20).

Parágrafo 1°. La prohibición contenida en este artículo, se extiende a los padres, cónyuges, hermanos o hijos de aquellos funcionarios.
Parágrafo 2°. Las empresas tendrán un plazo de diez y ocho (18) meses para dar cumplimiento a lo dispuesto en este artículo (Decreto 1236 de 1962, Artículos 11 y 12).

Artículo 7°. Las empresas industriales que establezcan o hayan establecido sistemas directos de distribución de sus productos o por intermedio de empresas comerciales, autónomas o filiales, no podrán vender sus artículos, mercancías o productos por procedimientos que impliquen competencia desleal para con los comerciantes independientes que negocien con los mismos artículos o productos (Decreto 3236 de 1962, Artículo 13)

Artículo 8°. Las empresas comerciales no podrán emplear prácticas, procedimientos o sistemas tendientes a monopolizar la distribución ni ejecutar actos de competencia desleal en perjuicio de otros comerciantes (Decreto 3236 de 1962, Artículo 14).

Artículo 9°. Cuando las empresas industriales fijen precios de venta al público, ni la misma empresa directamente, o por medio de filiales, o distribuidores, ni los comerciantes independientes, podrán venderlos a precios diferentes de los fijados por el productor, so pena de incurrir en las sanciones previstas para los casos de competencia desleal (Decreto 1302 de 1964, Artículo 14).

Artículo 10. Constituye competencia desleal todo acto o hecho contrario a la buena fe comercial y al honrado y normal desenvolvimiento de las actividades industriales, mercantiles, artesanales o agrícolas.

Artículo 11. (Subrogado Artículo 75 C. Co.). El Artículo 11 queda así:
Constituyen competencia desleal los siguientes hechos:

1) Los medios o sistemas encaminados a crear confusión con un competidor, sus establecimientos de comercio, sus productos o servicios (515);
2) Los medios o sistemas tendientes a desacreditar a un competidor, sus establecimientos de comercio, sus productos o servicios;
3) Los medios o sistemas dirigidos a desorganizar internamente una empresa competidora o a obtener sus secretos;
4) Los medios o sistemas encauzados a obtener la desviación de la clientela siempre que sean contrarios a las costumbres mercantiles;
5) Los medios o sistemas encaminados a crear desorganización general del mercado;
6) Las maquinaciones reiteradas tendientes a privar a un competidor de sus técnicos o empleados de confianza, aunque no produzcan la desorganización de la empresa ni se obtengan sus secretos;
7) La utilización directa o indirecta de una denominación de origen, falsa o engañosa; la imitación de origen aunque se indique la verdadera procedencia del producto o se emplee en traducción o vaya acompañada de expresiones tales como "género", "manera" "imitación" o similares;
8) Las indicaciones o ponderaciones cuyo uso pueda inducir al público a error sobre la naturaleza, modo de fabricación, características, aptitud en el empleo o cantidad del producto, y
9) En general, cualquier otra procedimiento similar a las anteriores, realizado par un competidor en detrimento de otros o de la colectividad, siempre que sea contrario a las costumbres mercantiles.

Artículo 12. El Ministerio de Fomento, de oficio o por denuncia de cualquier persona, podrá promover par intermedio de la Superintendencia Bancaria, la Superintendencia de Sociedades Anónimas o la Superintendencia de Cooperativas, las investigaciones par violaciones a esta Ley. En caso de que el control de la empresa no esté adscrita a las entidades antes dichas, la investigación estará a cargo del Ministerio de Fomento. La denuncia deberá ser admitida par el Ministerio siempre que se presente debidamente motivada y acompañada de prueba sumaria que la justifique (Decreto 1302 de 1964, Artículo 17).

Artículo 13. La investigación, de carácter estrictamente reservado, se adelantará mediante la exigencia de informes sobre producción, importaciones, utilización de materias primas nacionales y

extranjeras, sistemas de distribución y ventas; por medio de visitas a las referidas empresas y, en general, mediante la obtención de todas las pruebas indispensables.
Del acta de conclusiones se dará traslado por un término prudencial hasta de treinta (30) días a las entidades denunciadas o que en el curso de la investigación resultaren, implicadas a fin de que puedan formular sus descargos (Decreto 1302 de 1964, Artículo 16).

Artículo 14. Vencido este término, el expediente pasará al conocimiento del Ministerio de Fomento, el cual, previo concepto del Consejo de Política Económica y Planeación, podrá imponer las siguientes sanciones:
a) Retiro de las acciones del mercado público de valores.
b) Prohibición de funcionamiento de la empresa para el caso de reincidencia en la violación de esta Ley.
Además de estas sanciones, y de conformidad con la gravedad de los hechos, podrá imponer multas hasta de quinientos mil pesos ($500.000) a favor del Tesoro Nacional.

Artículo 15. Modificado: Decreto 3307 de 1963, Artículo 3. El Artículo 15 quedará así:
Contra la resolución que profiere el director ejecutivo, procede el recurso de apelación ante el Consejo Directivo de la Superintendencia de Regulación Económica. "El recurso se interpondrá y decidirá de conformidad con las normas establecidas en el Capítulo II del Decreto numero 2733 de 1959. Surtido el recurso, queda agotada la vía gubernativa" (Decreto 1302 de 1964, Artículo 19).

Artículo 16. En el caso de las sanciones previstas en el aparte b) del artículo 14, la demanda de la resolución ministerial ante el Consejo de Estado, suspende automáticamente su ejecución.

Artículo 17. En cumplimiento del artículo 32 de la Constitución Nacional, el Ejecutivo podrá intervenir en la fijación de los precios con el fin de garantizar tanto los intereses de los consumidores como el de los productores y comerciantes. La fijación de precios podrá realizarla el Gobierno, como una de las medidas que se tomen con base en la investigación que se haya verificado de acuerdo con esta Ley y para los productos o servicios de la empresa objeto de la investigación.
Igualmente el Estado podrá adoptar las siguientes medidas:
a) Fijar un plazo perentorio para que cesen las prácticas, sistemas o procedimientos prohibidos;
b) Someter a la empresa o empresas cuyas prácticas se investigan, a la vigilancia de la respectiva entidad encargada del control, por un tiempo determinado, en cuanto a su política de producción, costas, distribución y precios, y con el solo fin de comprobar que la empresa o empresas acusadas no continúan ejerciendo las prácticas comerciales restrictivas que dieron lugar a la investigación.

Artículo 18. Los revisores o interventores deberán ejercer una estrecha vigilancia para darle estricto cumplimiento a la presente Ley.

Artículo 19. Los acuerdos, convenios u operaciones prohibidas por esta Ley, son absolutamente nulos por objeto ilícito.

Artículo 20. Esta Ley regirá desde su sanción.

Dada en Bogotá, D.E. , a 14 de Diciembre de 1959.

El Presidente del Senado, JORGE URIBE MARQUEZ. - El Presidente de la Cámara, JESUS RAMIREZ SUAREZ. - El Secretario del Senado, Jorge Manrique Terán. - El Secretario de la Cámara, Luis Alfonso Delgado.

República de Colombia. Gobierno Nacional.
Bogotá, D.E., 24 de Diciembre de 1959.

Publíquese y ejecútese.
ALBERTO LLERAS

COLOMBIA

Decreto N° 1302 de 1 de junio de 1964

Por el cual se reglamenta la Ley 155 de 1959, en armonía con los Decretos 1653 de 1960 y 3307 de 1963.

Art.1. Sectores básicos.
Art.2. Documentos a suministrar por las empresas al Director Ejecutivo de la Superintendencia de Regulación Económica (DESRE).
Art.3. Examen por el DESRE del sector económico. Control y vigilancia.
Art.4. Delegación del control y la vigilancia.
Art.5. Presunción de restricción de competencia.
Art.6. Inicio del plazo de autorización presuntiva.
Art.7. Inicio del plazo en caso de informaciones adicionales.
Art.8. Objeción del DESRE, no por motivos de restricción de competencia, a una operación.
Art.9. Documentos requeridos que acompañen la solicitud de autorización de concentración.
Art.10. Auto del DESRE para petición de documentos.
Art.11. Suspensión temporal de la autorización de fusión.
Art.12. Plazo transitorio para regularizar los consorcios existentes.
Art.13. Control de incompatibilidades de los directivos.
Art.14. Observancia del precio de venta al publico del producto y accesorios.
Art.15. Denuncias orales o escritas a la SRE, y datos a informar.
Art.16. Plazo para los informes requeridos a las empresas.
Art.17. El DESRE investigara, salvo delegación con facultad de reasumir.
Art.18. Plazo de consulta al Departamento Administrativo de Planeación y Providencia de la Superintendencia vencido el plazo.
Art.19. Recurso de apelación contra las resoluciones del DESRE.
Art.20. Derogación del Decreto 3236 de 1962.
Art.21. Entrada en vigor.

Se reglamenta la Ley 155 de 1959

DECRETO NUMERO 1302 DE 1964
(junio 1o)

por el cual se reglamenta la Ley 155 de 1959, en armonía con los Decretos 1653 de 1960 y 3307 de 1963

El Presidente de la República de Colombia, en uso de sus facultades constitucionales,

DECRETA:

Artículo 1o. Para los efectos del parágrafo del artículo 1° de la Ley 155 de 1959, considéranse sectores básicos de la producción de bienes o servicios de interés para la economía general y el bienestar social, todas aquellas actividades económicas que tengan o llegaran a tener en el futuro importancia fundamental para estructurar racionalmente la economía del país y abastecerlo de bienes o servicios indispensables al bienestar general, tales como:

a) El proceso de producción y distribución de bienes, destinados a satisfacer las necesidades de la alimentación, el vestido, la sanidad y la vivienda de la población colombiana;
b) La producción y distribución de combustibles y, la prestación de los servicios bancarios educativos, de transporte, energía eléctrica, acueducto, telecomunicaciones y seguros.

Artículo 2o. Para el ejercicio de las funciones de que trata el presente Decreto, el Director Ejecutivo de la Superintendencia de Regulación Económica, se fundamentará en el estudio de los siguientes documentos, que deben suministrar semestralmente las empresas sujetas a la intervención:

a) Balances contables con los respectivos anexos demostrativos de su capacidad financiera, del volumen de las operaciones comerciales e industriales y de porcentaje de las utilidades obtenida en proporción del capital invertido;
b) Informes comprobatorios de los costos netos de producción distribución y de las reservas presupuestales diferidas y destinadas a la amortización de las inversiones hechas por la respectiva empresa industrial o comercial, al igual que otra clase de reservas;
c) Lista de los precios de los artículos que produzca o distribuya la correspondiente empresa y sus respectivas escalas de descuentos para la distribución y venta de los mismos, a niveles mayoristas y minoristas;
d) Muestras de los productos o artículos que la empresa produzca o distribuya, para verificar su calidad, peso y empaque y la observancia de las normas sobre pesas y medidas y clasificación de los productos;
e) Informes sobre existencia, origen y costo de las materias primas y productos elaborados y sobre los saldos en disponibilidad;
f) Informes sobre la producción de las materias primas nacionales y extranjeras incorporadas en el procesamiento industrial y sobre los programas tendientes a fomentar su producción total en el país; o informes sobre la proporción de materias primas elaboradas de procedencia nacional o extranjera que adquiera el correspondiente distribuidor o que utilice el productor de servicios, según el caso;
g) Informes sobre los sistemas de transporte, distribución venta de los productos o artículos manufacturados;
h) Informes sobre los mercados abastecidos por la respectiva producción industrial o empresa comercial y sobre el volumen de las ventas realizadas en tales mercados;
i) Informes sobre el personal de trabajadores ocupados por la respectiva empresa industrial o comercial, sobre el monto anual de los salarios y sobre las prestaciones de carácter asistencial establecidas;
j) Una memoria descriptiva de los equipos de trabajo, de sus costos de adquisición, instalación y operación, de su capacidad de servicio y de las ampliaciones y mejoras programadas;
k) Informe sobre el monto de los impuestos nacionales, departamentales y municipales pagados anualmente por la respectiva empresa industrial o comercial;

l) Un esquema sobre los sistemas de distribución, ilustrados con informaciones de la respectiva empresa, y

m) Todos los demás documentos e informaciones que solicite el Director Ejecutivo de la Superintendencia de Regulación Económica en los casos en que por la índole de la empresa y los problemas que suscite su vigilancia, no fueran suficientes los relacionados anteriormente.

Artículo 3o. El Director Ejecutivo de la Superintendencia de Regulación Económica hará el análisis de todos los factores enumerados, con el fin de establecer si la empresa o empresas de que se trata afectan sin motivo justificable los intereses de la respectiva rama de la industria o del comercio, y en este caso, podrá imponerles el cumplimiento de las obligaciones que considere necesarias para el efecto de su control, a fin de que adopten prácticas y procedimientos conformes con la equidad y con los intereses legítimos de productores y consumidores. Si del examen resultare que dichas empresas no están ocasionando perjuicio a los intereses de los expresados sectores, el Director Ejecutivo de la Superintendencia de Regulación Económica podrá someterlas al régimen de libertad vigilada.

Artículo 4o. El Director Ejecutivo de la Superintendencia de Regulación Económica podrá delegar las funciones de vigilancia y control de que trata el presente Decreto, en los Gobernadores de los Departamentos o en los Alcaldes de los Distritos que tengan más de veinticinco mil (25.000) habitantes. Los Gobernadores, a su vez, podrán delegar estas funciones, en cualquier funcionario bajo su dependencia, previa autorización del Director Ejecutivo de la Superintendencia de Regulación Económica.

Artículo 5o. Para los efectos del parágrafo 1° del artículo 4° de la Ley 155 de 1959, se presume que una concentración económica tiende a producir indebida restricción de la libre competencia:

a) Cuando ha sida precedida de convenios ligados entre las empresas con el fin de unificar e imponer los precios a los productores de materias primas o a los consumidores, o para distribuirse entre si los mercados, o para limitar la producción, distribución o prestación del servicio;

b) Cuando las condiciones de los correspondientes productos o servicios en el mercado sean tales que la fusión, consolidación o integración de las empresas que los producen a distribuyen pueda determinar precios inequitativos en prejuicio de los competidores o de los consumidores.

Parágrafo. Al tenor de lo dispuesto por el artículo 4° de la misma Ley, entiéndase por activos, individual o conjuntamente considerados, los activos brutos, de las empresas que pretendan fusionarse o integrarse.

Artículo 6o. Para los efectos de la autorización presuntiva que se establece en el paráqrafo 2° del artículo 4° de la Ley 155 de 1959, el término de 30 días empezará a contarse desde la fecha en que la respective solicitud de permiso de fusión, consolidación o integración jurídico-económica pase al estudio del Director Ejecutivo de la Superintendencia de Regulación Económica. Esta fecha deberá hacerse constar en el libro que para que tal efecto llevará la Superintendencia de Regulación Económica.

Artículo 7o. Cuando las informaciones presentadas con la petición de permiso no proporcionen suficientes elementos de juicio para que el Director Ejecutivo de la Superintendencia de Regulación Económica pueda adoptar la correspondiente decisión de fondo, el término de 30 días a que se refiere el artículo anterior, no empezará a correr a favor de las empresas interesadas sino a partir de la fecha en que el Director Ejecutivo de la Superintendencia de Regulación Económica reciba las informaciones adicionales que sobre el particular haya solicitado, o a partir de la fecha en que venza el término señalado par dicho funcionario para que le sean suministradas.

Artículo 8o. Cuando el Director Ejecutivo de la Superintendencia de Regulación Económica objetare una operación de fusión, consolidación o integración de empresas, no porque tienda a producir una indebida restricción de la libre competencia sino por cualquiera otro de los motivos expresados en el artículo 1° de la Ley 155 de 1959, o porque no se le hayan suministrado las informaciones necesarias sobre los antecedentes, modalidades y finalidades de la operación, la resolución correspondiente no requerirá el concepto previo del Departamento Administrativo de Planeación.

Artículo 9o. Toda solicitud tendiente a obtener la autorización para una concentración jurídico-económica de empresas, deberá contener los siguientes anexos informativos:

a) Certificación expedida por la Secretaría General de la Superintendencia de Regulación Económica, acerca de la circunstancia de qué ninguna de las empresas de que se trate ha sido sancionada o reconvenida por la práctica de sistemas o procedimientos restrictivos de la libre competencia;

b) La capacidad de la operación, los mercados abastecidos par las empresas interesadas en la indagación;

c) Los sistemas de apelación en general, y concretamente de transporte, distribución y venta establecidos por las empresas que pretenden fusionarse, consolidarse o integrarse;

d) Certificación de la Secretaría de la Superintendencia de Regulación Económica, sobre presentación de los documentos exigidos correspondientes al semestre anterior a la fecha de la solicitud, conforme a lo dispuesto par el artículo 2° de la Ley 155 de 1959;

e) Copia de la escritura de constitución de cada una de las sociedades, interesadas, y de las escrituras reformatorias del contrato de sociedad, registrados conforme a la ley, más el certificado de la Cámara del Comercio, o de la entidad correspondiente, que acredite quienes tienen su representación, si se trata de personas jurídicas; o si se trata de personas naturales, certificado de la Cámara de Comercio en donde conste que la empresa se halla inscrita en el registro público de comercio;

f) Copia del último balance de cada empresa, debidamente autenticado;

g) Si se trata de sociedades, copias completa de las actas en que consten las autorizaciones de fusión, consolidación o integración acordadas par las respectivas Asambleas Generales de Socios y las juntas directivas, o copia registrada de los documentos en que se convinieran las condiciones de fusión, consolidación a integración si se trata de empresas de propiedad individual;

h) Las demás informaciones que solicite el Director Ejecutivo de la Superintendencia de Regulación Económica, cuando considere que las establecidas en este artículo no son suficientes.

Artículo 10. El suministro de documentos e informes que el Director Ejecutivo de la Superintendencia de Regulación Económica requiera para formar criterio acerca de cualesquiera de documentos sometidos a su consideración, será ordenado por medio de auto en el que se fije el término correspondiente, bajo apremio de multa hasta por la suma de diez mil pesos ($10.000). A la misma sanción se harán acreedoras las enpresas que no den cumplimiento a lo dispuesto por el artículo 2° de este Decreto.

Artículo 11. Las autorizaciones que el Director Ejecutivo de la Superintendencia de Regulación Económica confiera para la fusión, consolidación a integración de empresas industriales o comerciales podràn ser suspendidas temporalmente y aún revocadas por el mismo funcionario, de oficio o a solicitud de cualquier ciudadano, cuando se comprueba que la nueva organización jurídico-económica ha incurrido en violación de la normas consagradas por la Ley 155 de 1959.

Artículo 12. Los consorcios industriales que existían antes de la Ley 155 de 1959, y las concentraciones jurídico-económicas organizadas con posterioridad a su vigencia sin el permisso de la Superintendencia de Regulación Económica, deberán presentar al Director Ejecutivo de la misma, dentro de los 90 días siguientes a la vigencia del presente Decreto, y necesitarán autorización del citado Director para continuar ejerciendo sus actividades económicas.

Artículo 13. Para el control de las incompatibilidades establecidas por el artículo 5° de la Ley 155 de 1959, las empresas industriales y comerciales sujetas a la intervención del Estado deberán presentar anualmente a la Superintendencia de Regulación Económica la relación de los integrantes de sus juntas directivas de los funcionarios encargados de su representación, dirección y administración.

Artículo 14. La observancia de los precios de venta al público, establecida por el artículo 9o de la citada Ley, comprende el precio unitario de los productos y artículos manufacturados y el de los accesorios o aditamentos complementarios indispensables para su uso y aprovechamiento.

Artículo 15. Las denuncias ante la Superintendencia de Regulación Económica por violación de las normas de la Ley 155 de 1959, podrán ser orales o escritas, y su motivación consistirá en la enunciación concreta del infractor o infractores, su domicilio social o comercial y de los actos constitutivos de la violación denunciada.

Artículo 16. Los informes requeridos por el artículo 13 de la Ley 155 de 1959 deberán ser suministrados dentro de un plazo de 15 días, contados a partir de la fecha en que los informes hayan sido suministrados o en que se haya vencido el término dentro del cual debieron suministrarse.

Artículo 17. El Director Ejecutivo de la Superintendencia de Regulación Económica adelantará y llevará hasta su término las investigaciones que no confíe a las entidades que se refiere el artículo 12 de la Ley 155 de 1959, y ejercerá la vigilancia sobre las diligencias que practiquen dichas entidades, pudiendo reasumir el negocio o negocios correspondientes cuando lo considere conveniente para el éxito de las investigaciones.

Artículo 18. Para que rinda el previo concepto que le corresponde, la Superintendencia señalará al Departamento Administrativo de Planeación un plazo prudencial, no superior a treinta (30) días, vencido el cual la Superintendencia procederá de todas maneras a dictar la providencia respectiva.

Artículo 19. Contra las resoluciones que profiera el Director Ejecutivo de la Superintendencia de Regulación Económica, procede el recurso de apelación, de conformidad con lo dispuesto por el artículo 3o del Decreto 3307 de 1963.

Artículo 20. Derógase en todas sus partes el Decreto número 3236 de 1962.

Artículo 21. Este Decreto rige desde la fecha de su expedición.

Comuníquese y cúmplase.

Dado en Bogotá, D.E., a 1o de junio de 1991.

GUILLERMO LEON VALENCIA
El Ministro de Fomento, Anibal Vallejo Alvarez.

COLOMBIA

Decreto 2153 de Diciembre 30 de 1992

Por el cual se reestructura la Superintendencia de Industria y Comercio y se dictan otras disposiciones.

Capítulo I.- NATURALEZA Y FUNCIONES

art.1 Naturaleza , art.2. Funciones

Capítulo II. - ESTRUCTURA DE LA SUPERINTENDENCIA

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1. Despacho del Superintendente: Oficinas
2. Despacho del Superintendente Delegado para la Promoción de la Competencia
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art.4. Funciones del Superintendente de Industria y Comercio.
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art.10. Funciones de los Superintendentes Delegados.
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art.12. Funciones de la División de Promoción dela Competencia.
art.13 a 23. Funciones Especiales de los de los demás Superintendentes Delegados, las Divisiones y la Secretaría General.

Capítulo III.- ORGANOS DE ASESORÍA Y CORDINACIÓN

art.24. Consejo Asesor para asuntos relacionados con la Promoción de la Competencia
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Capítulo IV.- DISPOSICIONES LABORALES TRANSITORIAS

I. DISPOSICIONES GENERALES, art.28 a 33;
II. DE LAS INDEMNIZACIONES, art.34 y 35;
III. DE LAS BONIFICACIONES, art.36;
IV. DISPOSICIONES COMUNES AL RÉGIMEN DE II Y III, art. 37 a 43;

Capítulo V. - DISPOSICIONES COMPLEMENTARIAS

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art.45. Definiciones:
1.Acuerdo, 2.Acto, 3.Conducta, 4.Control, 5.Posición Dominante, 6.Producto;
art.46. Prohibición.
art.47. Acuerdos contrarios a la Libre Competencia.
art.48. Actos Contrarios a la Libre Competencia.
art.49. Excepciones.
art.50. Abuso de Posición Dominante.
art.51. Integración de Empresas.
art.52. Procedimiento.

Capítulo VI. - DISPOSICIONES VARIAS, art.53 a 59.

DECRETO 2153 DE DICIEMBRE 30 DE 1992

Por el cual se reestructura la Superintendencia de Industria y Comercio y se dictan otras disposiciones

EL PRESIDENTE DE LA REPUBLICA DE COLOMBIA

en ejercicio de las atribuciones constitucionales, en especial de las que le confiere el Artículo Transitorio 20 de la Constitución Política y teniendo en cuenta las recomendaciones de la Comisión de que trata el mismo artículo,

DECRETA:

CAPITULO I
NATURALEZA Y FUNCIONES

ARTÍCULO 1° Naturaleza.- La Superintendencia de Industria y Comercio es un organismo de carácter técnico adscrito al Ministerio de Desarrollo Económico, que goza de autonomía administrativa, financiera y presupuestal.

ARTÍCULO 2° Funciones.- La Superintendencia de Industria y Comercio ejercerá las siguientes funciones:

1. Velar por la observancia de las disposiciones sobre promoción de la competencia y prácticas comerciales restrictivas, en los mercados nacionales sin perjuicio de las competencias señaladas en las normas vigentes a otras autoridades; atender las reclamaciones o quejas por hechos que afecten la competencia en los mercados y dar trámite a aquellas que sean significativas, para alcanzar, en particular, las siguientes finalidades: mejorar la eficiencia del aparato productivo nacional; que los consumidores tengan libre escogencia y acceso a los mercados de bienes y servicios; que las empresas puedan participar libremente en los mercados; y, que en el mercado exista variedad de precios y calidades de bienes y servicios.

2. Imponer las sanciones pertinentes por violación de las normas sobre practicas comerciales restrictivas y promoción de la competencia, así como por la inobservancia de las instrucciones que en desarrollo de sus funciones imparta la Superintendencia;

3. Imponer sanciones a las empresas oficiales o privadas que presten los servicios públicos de telecomunicaciones, energía, agua potable, alcantarillado y aseo, cuando se atente contra los principios de libre competencia, a solicitud de una de las Comisiones de Regulación de tales servicios, o cuando se incumplan las normas vigentes en materia tarifaria, facturación, medición, comercialización y relaciones con el usuario.

4. Velar por la observancia de las disposiciones sobre protección al consumidor a que se refiere este decreto y dar trámite a las reclamaciones o quejas que se presenten, cuya competencia no haya sido asignada a otra autoridad, con el fin de establecer las responsabilidades administrativas del caso u ordenar las medidas que resulten pertinentes;

5. Imponer, previas explicaciones, de acuerdo con el procedimiento aplicable, las sanciones que sean pertinentes por violación de las normas sobre protección al consumidor, así como por la inobservancia de las instrucciones impartidas por la Superintendencia;

6. Administrar el sistema nacional de la propiedad industrial y tramitar y decidir los asuntos relacionados con la misma;

7. Ejercer el control y vigilancia de las cámaras de comercio, sus federaciones y confederaciones, de acuerdo con las disposiciones vigentes sobre la materia, y coordinar lo relacionado con el registro único mercantil;

8. Resolver los recursos de apelación y queja interpuestos contra los actos expedidos por las cámaras de comercio;

9. Solicitar o recibir asistencia técnica y financiera, a través del Fondo Especial de la misma Superintendencia, de entidades internacionales o de gobiernos extranjeros para el desarrollo de sus programas;

10. Solicitar a las personas naturales y jurídicas el suministro de datos, informes, libros y papeles de comercio que se requieran para el correcto ejercicio de sus funciones;

11. Practicar visitas de inspección con el fin de verificar el cumplimiento de las disposiciones legales cuyo control le compete y adoptar las medidas que correspondan conforme a la ley;

12. Interrogar bajo juramento y con observancia de las formalidades previstas para esta clase de pruebas en el Código de Procedimiento Civil, a cualquier persona cuyo testimonio pueda resultar útil para el esclarecimiento de los hechos durante el desarrollo de sus funciones.

13. Establecer, coordinar, dirigir y vigilar los programas nacionales de control industrial de calidad, pesas, medidas y metrología, y organizar los laboratorios de control de calidad y metrología que considere indispensables para el adecuado cumplimiento de sus funciones;

14. Fijar el término de la garantía mínima presunta para bienes o servicios;

15. Prohibir o someter al cumplimiento de requisitos especiales la propaganda comercial de todos o algunos de los bienes o servicios que por su naturaleza o componentes sean nocivos para la salud;

16. Acreditar y supervisar los organismos de certificación, los laboratorios de pruebas y ensayo y de calibración que hagan parte del sistema nacional de certificación;

17. Organizar el sistema de registro de calidad e idoneidad de que trata el Decreto 3466 de 1982 y las disposiciones que lo adicionen o reformen;

18. Establecer las normas necesarias para la implantación del sistema internacional de unidades en los sectores de la industria y el comercio;

19. Fijar requisitos mínimos de calidad e idoneidad para determinados bienes y servicios, mientras se oficializan las normas técnicas correspondientes,

20. Asesorar al Gobierno Nacional y participar en la formulación de las políticas en todas aquellas materias que tengan que ver con la protección al consumidor, la promoción de la competencia y la propiedad industrial y en las demás áreas propias de sus funciones;

21. Instruir a sus destinatarios sobre la manera como deben cumplirse las disposiciones en las materias a que hace referencia el numeral anterior, fijar los criterios que faciliten su cumplimiento y señalar los procedimientos para su cabal aplicación.

22. Asumir, cuando las necesidades públicas así lo aconsejen, el conocimiento exclusive de las investigaciones e imponer las sanciones por violación de las normas sobre control y vigilancia de precios;

23. Las demás funciones que, en lo sucesivo, le asigne la ley.

PARAGRAFO. La función a que se refiere el numeral 3o. del presente artículo será ejercida por la Superintendencia de Industria y Comercio hasta tanto la ley regule las funciones de la Superintendencia de Servicios Públicos.

CAPITULO II
ESTRUCTURA DE LA SUPERINTENDENCIA

ARTÍCULO 3°. Estructura.- La Superintendencia de Industria y Comercio tendrá la siguiente estructura:

1. DESPACHO DEL SUPERINTENDENTE

1.1. Oficina Jurídica
1.2. Oficina de Planeación
1.3. Oficina de Sistemas
1.4. Oficina de Calidad
1.5. Oficina de Comunicaciones

2. DESPACHO DEL SUPERINTENDENTE DELEGADO PARA LA PROMOCION DE LA COMPETENCIA.

2.1. División de Promoción de la Competencia
2.2. División de Cámaras de Comercio

3. DESPACHO DEL SUPERINTENDENTE DELEGADO PARA LA PROPIEDAD INDUSTRIAL.

3.1. División de Signos Distintivos
3.2. División de Nuevas Creaciones

4. DESPACHO DEL SUPERINTENDENTE DELEGADO PARA LA PROTECCION DEL CONSUMIDOR.

4.1. División de Protección al Consumidor
4.2. División de Normas Técnicas
4.3. División de Metrología

5. SECRETARIA GENERAL.

5.1. División Administrativa
5.2. División Financiera

6. ORGANOS DE ASESORIA Y COORDINACION

6.1. Consejo Asesor
6.2. Comité de Coordinación
6.3. Comité de Personal
6.4. Junta de Adquisiciones y Licitaciones

ARTÍCULO 4°. Funciones del Superintendente de Industria y Comercio. Al Superintendente de Industria y Comercio, como jefe del organismo, le corresponde el ejercicio de las siguientes funciones:

1. Dirigir la Superintendencia de Industria y Comercio, conjuntamente con los Superintendentes Delegados;

2. Velar por el cumplimiento de las disposiciones legales relativas a la entidad y por el eficiente desempeño de las funciones técnicas y administrativas de la misma;

3. Solicitar a las juntas directivas de las Cámaras de Comercio la remoción de sus dignatarios y empleados, cuando lo considere necesario para la buena marcha de las mismas,

4. Decretar, cuando lo considere pertinente y según las circunstancias, la suspensión o cierre de las Cámaras de Comercio;

5. Decidir las solicitudes de patentes de invención;

6. Otorgar licencias obligatorias de patentes, en los casos previstos en la ley;

7. Decretar la caducidad de los derechos conferidos por las patentes de invención;

8. Decidir los recursos de apelación y queja contra los actos expedidos por el jefe de la División Signos Distintivos, que se refieran a marcas notorias;

9. Acreditar, previo el cumplimiento de los requisitos pertinentes, a las personas encargadas de certificar el cumplimiento de las normas técnicas, cancelar la autorización correspondiente y señalar las condiciones del uso del sello oficial de calidad;

10. Vigilar el cumplimiento de las disposiciones sobre promoción de la competencia y practicas comerciales restrictivas establecidas por la ley 155 de 1959, disposiciones complementarias y en particular aquellas a que se refiere el presente decreto, respecto de todo aquél que desarrolle una actividad económica, independientemente de su forma o naturaleza jurídica, con sujeción al artículo 20, numeral 111, del presente decreto;

11. Ordenar, como medida cautelar, la suspensión inmediata de conductas que puedan resultar contrarias a las disposiciones a que se refiere el numeral anterior;

12. Decidir sobre la terminación de investigaciones por presuntas violaciones a las disposiciones a que se refiere el numeral 10 del presente artículo, cuando a su juicio el presunto infractor brinde garantías suficientes de que suspenderá o modificará la conducta por la cual se le investiga;

13. Ordenar a los infractores la modificación o terminación de las conductas que sean contrarias a las disposiciones sobre promoción de la competencia y practicas comerciales restrictivas a que alude el presente decreto;

14. Pronunciarse sobre la fusión, consolidación, integración y adquisición del control de empresas;

15. Imponer sanciones pecuniarias hasta por el equivalente a dos mil (2.000) salarios mínimos mensuales legales vigentes al momento de la imposición de la sanción, por la violación de las normas sobre promoción de la competencia y practicas comerciales restrictivas a que se refiere el presente decreto.

Así mismo, imponer las sanciones señaladas en este numeral por violación a la libre competencia o incumplimiento en materia de tarifas, facturación, medición comercialización y relaciones con el usuario de las empresas que presten los servicios públicos de telecomunicaciones, energía, agua potable, alcantarillado y aseo, en estos últimos sectores mientras la ley regula las funciones de la Superintendencia de Servicios Públicos.

16. Imponer a los administradores, directores, representantes legales, revisores fiscales y demás personas naturales que autoricen, ejecuten o toleren conductas violatorias de las normas sobre promoción de la competencia y practicas comerciales restrictivas a que alude el presente decreto, multas de hasta trescientos (300) salarios mínimos legales mensuales vigentes en el momento de la imposición de la sanción, a favor del Tesoro Nacional. Así mismo, imponer la sanción señalada en este numeral a los administradores, representantes legales, revisores fiscales y demás personas naturales que autoricen, ejecuten o toleren practicas contrarias a la libre competencia en la prestación de los servicios públicos de telecomunicaciones, energía, agua potable, alcantarillado y aseo, en estos eventos hasta tanto la ley regule las funciones de la Superintendencia de Servicios Públicos.

17. Fijar los requisitos mínimos de calidad e idoneidad de determinados bienes y servicios mientras se oficializan las normas técnicas correspondientes;

18. Asesorar al Gobierno en la reglamentación y el otorgamiento del Premio Nacional de la Calidad;

19. Nombrar, remover y administrar el personal de la Superintendencia de acuerdo con las normas vigentes, con excepción de los Superintendentes Delegados, cuya designación y remoción es competencia del Presidente de la República;

20. Dirigir la elaboración del proyecto de presupuesto de la entidad y someterlo a consideración del Ministerio de Desarrollo Económico;

21. Rendir informes detallados al Presidente de la República y al Ministro de Desarrollo Económico, de conformidad con. las normas legales;

22. Señalar las políticas generales de la entidad,

23. Expedir los actos administrativas que le correspondan así como los reglamentos y manuales instructivos que sean necesarios para el cabal funcionamiento de la entidad;

24. Decidir los recursos de reposición y las solicitudes de revocación directa interpuestos contra los actos que expida;

25. Establecer grupos internos de trabajo de acuerdo con los objetivos, necesidades del servicio y planes y programas que trace la entidad;

26. De acuerdo con la estructura orgánica, reasignar y distribuir competencias entre las distintas dependencias cuando ello resulte necesario para el mejor desempeño de las funciones de la Superintendencia de Industria y Comercio;

27. Expedir, cuando lo considere pertinente, los actos administrativas que por virtud del presente decreto le correspondan a los Superintendentes Delegados-,

28. Las demás que, en lo sucesivo, le asigne la ley y las que le corresponden por la naturaleza de su cargo.

ARTÍCULO 5°. Funciones de la Oficina Jurídica. Son funciones de la Oficina Jurídica:

1. Asesorar al Superintendente de Industria y Comercio, a los Superintendentes Delegados y al Secretario General en los asuntos jurídicos de competencia de la Sup. rintendencia de Industria y Comercio;

2. Absolver las consultas que en materia jurídica hagan el publico en general y las dependencias de la entidad, dentro de la competencia de la Superintendencia de Industria y Comercio;

3. Elaborar o revisar los proyectos de contratos de la Superintendencia de Industria y Comercio;

4. Atender y controlar el trámite de los procesos en que tenga interés la Superintendencia de Industria y Comercio y mantener informado al Superintendente sobre el desarrollo de los mismos;

5. Coordinar, controlar y evaluar los procesos administrativos disciplinarios que se adelanten contra funcionarios o exfuncionarios de la entidad;

6. Recopilar las leyes, decretos y demás disposiciones legales que se relacionen con el campo de acción de la Superintendencia de Industria y Comercio;

7. Coordinar con las demás dependencias la elaboración de conceptos jurídicos con el objeto de mantener uniformidad de criterio;

8. Las demás que se le asignen de acuerdo con la naturaleza de la dependencia.

ARTÍCULO 6°. Funciones de la Oficina de Planeación. Son funciones de la Oficina de Planeación:

1. Asesorar al Superintendente de Industria y Comercio en la adopción de planes y programas, en concordancia con los objetivos de la Superintendencia y la política adoptada por el Gobierno Nacional;

2. Preparar el presupuesto anual de funcionamiento de la Superintendencia de Industria y Comercio y coordinar lo relativo a los programas de inversión;

3. Elaborar, con base en los planes propios de cada área, el plan general de trabajo de la Superintendencia de Industria y Comercio y sugerir la determinación global de los recursos;

4. Planificar, asesorar y evaluar periódicamente el proceso administrativa, elaborando los reglamentos necesarios para la ejecución de las medidas que deban aplicarse en cuanto a funciones, sistemas, métodos, procedimientos y trámites administrativas, y mantener los respectivos manuales actualizados;

5. Presentar los informes que le sean solicitados por el Superintendente;

6. Preparar, en coordinación con la División Administrativa, el programa anual de compras de la entidad;

7. Las demás que se le asignen de acuerdo con la naturaleza de la dependencia.

ARTÍCULO 7°. Funciones de la Oficina de Sistemas. Son funciones de la Oficina de Sistemas:

1. Asesorar al Superintendente en los asuntos relacionados con el procesamiento y análisis de datos;

2. Programar, dirigir y coordinar las actividades relacionadas con el procesamiento, análisis, archivo y suministro de información que produzca o reciba la entidad;

3. Dirigir la elaboración de los estudios que permitan determinar la factibilidad técnica y económica para la adquisición o modificación de sistemas y equipos de procesamiento electrónico de datos y presentar las recomendaciones del caso;

4. Orientar la elaboración de los términos de referencia para la contratación o adquisición de servicios de sistemas o equipos de procesamiento de datos;

5. Colaborar con la Oficina Jurídica en la elaboración de las minutas de contratos de la Superintendencia en el campo de la informática;

6. Dirigir la elaboración de los sistemas computarizados que se requieran para el desarrollo de la entidad;

7. Coordinar el oportuno y eficiente suministro de la información procesada por el computador;

8. Velar por la adecuada instalación y mantenimiento de equipos;

9. Diseñar los mecanismos de control que se requieran para garantizar la seguridad de la información que contengan las diferentes aplicaciones;

10. Presentar los informes solicitados por el Superintendente, los Superintendentes Delegados o el Secretario General;

11. Las demás que se le asignen de acuerdo con la naturaleza de la dependencia.

ARTÍCULO 8°. Funciones de la Oficina de Calidad. Son funciones de la Oficina de Calidad:

1. Asesorar al Superintendente de Industria y Comercio en la definición de la filosofía de calidad en el servicio que debe adoptar el organismo;

2. Diseñar un plan anual de acción para el mejoramiento de la calidad en toda la Superintendencia de Industria y Comercio;

3. Difundir la política de calidad en el servicio adoptada por la Superintendencia de Industria y Comercio e informar a los funcionarios de todos los niveles sobre el significado de la política de calidad, así como su realización e implantación;

4. Implantar métodos de información sobre la calidad en el servicio y promover la motivación y participación de los funcionarios de la Superintendencia de Industria y Comercio en los programas que se establezcan;

5. Proponer los correctivos necesarios cuando se detecten deficiencias en las dependencias en cuanto al cumplimiento de las disposiciones legales y las políticas institucionales;

6. Velar por el cumplimiento del trámite de las quejas y peticiones elevadas ante la Superintendencia de Industria y Comercio y llevar el respective control;

7. Establecer mecanismos de seguimiento y control al programa anual de actividades;

8. Diseñar y proponer la aplicación de métodos y procedimientos de control interno en relación con las distintas áreas de la Superintendencia de Industria y Comercio, de conformidad con lo que disponga la

9. Establecer indicadores de gestión para las actividades de la Superintendencia de Industria y Comercio;

10. Evaluar periódicamente la ejecución de los planes propios de cada área, así como el plan general de trabajo de la Superintendencia de Industria y Comercio;

11. Las demás que se le asignen de acuerdo con la naturaleza de la dependencia.

ARTÍCULO 9°. Funciones de la Oficina de Comunicaciones. Son funciones de la Oficina de Comunicaciones:

1. Asesorar al Superintendente de Industria y Comercio, Superintendentes Delegados y Secretario General en todos los asuntos relacionados con la información y divulgación de las actividades que desarrolla la Superintendencia,

2. Emitir, previa autorización del Superintendente de Industria y Comercio, comunicados oficiales con destino a los medios de comunicación masiva tales como prensa, radio y televisión, sobre las actuaciones de la Superintendencia, políticas y planes y programas a desarrollar;

3. Coordinar las labores de diseño y diagramación de las revistas que publica la Superintendencia de Industria y Comercio, en especial de la publicación de la Gaceta de Propiedad Industrial-.

4. Diseñar los sistemas de comunicación interna que requiera la Superintendencia y que garanticen la eficiente divulgación de los temas que interesan a los funcionarios en general;

5. Colaborar en la definición de términos de referencia de los contratos o convenios en materia de prestación de Servicios de edición, publicación y publicidad de anuncios de prensa de la Superintendencia;

6. Seleccionar datos e información publica de interés para la entidad y hacerlos conocer internamente; y

7. Las demás que se le asignen de acuerdo con la naturaleza de la dependencia.

ARTÍCULO 10°. Funciones de los Superintendentes Delegados. Son funciones de los Superintendentes Delegados, sin perjuicio de las especiales que corresponde a cada uno de ellos, las siguientes:

1. Colaborar con el Superintendente de Industria y Comercio en la dirección de la Superintendencia y, en especial, en lo referente a las dependencias bajo su cargo;

2. Velar por el cumplimiento de las normas y leyes vigentes y proponer nuevas disposiciones;

3. Encargarse, cuando así lo decida el Presidente de la República, de las funciones del Despacho del Superintendente de Industria y Comercio en sus ausencias temporales,

4. Velar por el eficiente desempeño de las funciones técnicas y administrativas, así como coordinar la actividad de las dependencias a su cargo;

5. Recibir y evaluar los informes que les sean presentados por los jefes de las divisiones a su cargo e informar periódicamente al Superintendente o a solicitud de éste, sobre el estado de los asuntos de sus dependencias y el grado de ejecución de los programas de las mismas;

6. Las demás que les delegue o señale el Superintendente de Industria y Comercio.

ARTÍCULO 11. Funciones Especiales del Superintendente Delegado para la Promoción de la Competencia.

1 Iniciar de oficio, o por solicitud de un tercero, averiguaciones preliminares sobre infracciones a las disposiciones sobre promoción de la competencia y prácticas comerciales restrictivas señaladas en el numeral 10 del artículo 4o. del presente decreto;

2. Resolver sobre la admisibilidad de las denuncias de que trata el numeral anterior.

3. Tramitar la averiguación preliminar e instruir la investigación tendiente a establecer la infracción a las disposiciones sobre promoción de la competencia y prácticas comerciales restrictivas a que se refiere el presente decreto;

4. Mantener un registro de las investigaciones adelantadas y de las sanciones impuestas, así como de los compromisos adquiridos en desarrollo de los procedimientos correspondientes a las disposiciones sobre promoción de la competencia y prácticas comerciales restrictivas;

5. Imponer a las personas que ejerzan profesionalmente el comercio, sin estar matriculadas en el registro mercantil, multas hasta el equivalente de diecisiete (17) salarios mínimos mensuales legales vigentes al momento de la imposición de la sanción;

6. Imponer a las Cámaras de Comercio, previas explicaciones, multas hasta el equivalente a ochenta y cinco (85) salarios mínimos mensuales legales vigentes al momento de la imposición de la sanción, por infracción a las leyes, a los estatutos o a cualquier otra norma legal a que deben sujetarse, así como por la inobservancia de las ordenes e instrucciones impartidas por la Superintendencia de Industria y Comercio;

7. Aprobar el reglamento interno de las Cámaras de Comercio;

8. Decidir los recursos de reposición y las solicitudes de revocatoria directa contra los actos que expida;

9. Decidir los recursos de apelación y queja interpuestos contra actos emanados de las Cámaras de Comercio.

ARTÍCULO 12. Funciones de la División de Promoción de la Competencia. Son funciones de la División de Promoción de la Competencia:

1. Apoyar al Superintendente Delegado para la Promoción de la Competencia en la tramitación de las averiguaciones preliminares y la instrucción de los casos sobre infracción a las disposiciones sobre promoción de la competencia y prácticas comerciales restrictivas;

2. Atender las quejas formuladas por los particulares y si en desarrollo de éstas se observaren posibles violaciones a las disposiciones sobre prácticas comerciales restrictivas de la competencia, proponer ante el Superintendente Delegado para la promoción de la competencia la iniciación del procedimiento correspondiente, cuando la importancia de la conducta o de la práctica así lo amerite;

3. Atender las consultas que se le formulen relativas al área a su cargo;

4. Tramitar las solicitudes tendientes a la consolidación, integración o fusión y obtención del control de empresas, en los términos establecidos en la ley;

5. Elaborar los proyectos de resolución mediante los cuales se imponen sanciones por violación a las normas sobre prácticas comerciales restrictivas de la libre competencia;

6. Instruir las investigaciones que se inicien para establecer el cumplimiento de las normas relativas al área a su cargo;

7. Obtener y mantener la información relevante sobre los diferentes mercados nacionales e internacionales, clasificados según la codificación técnica;

8. Elaborar los estudios económicos y técnicos necesarios para el cumplimiento de las funciones de la Delegatura de la Promoción de la Competencia;

9. Las demás que se le asignen de acuerdo con la naturaleza de la dependencia.

ARTÍCULO 13. Funciones de la División de Cámaras de Comercio. Son funciones de la División de Cámaras de Comercio.

1 Estudiar y proyectar los actos administrativos que decidan las solicitudes de creación de nuevas cámaras de comercio;

2. Vigilar las elecciones de las juntas directivas de las cámaras de comercio;

3. Vigilar administrativa y contablemente el funcionamiento de las cámaras de comercio, sus federaciones y confederaciones;

4. Atender las consultas que se le formulen relativas al área a su cargo,

5. Proyectar los recursos de apelación y queja interpuestos contra los actos de registro mercantil emanados de las Cámaras de Comercio;

6. Evaluar el informe o memorial presentado por las cámaras de comercio acerca de las labores realizadas en el año anterior y el concepto que estas entidades deben presentar sobre la situación económica de sus respectivos zonas, así como el detalle de sus ingresos y egresos;

7. Elaborar los proyectos de Resolución mediante los cuales se imponen sanciones en las materias de su competencia;

8. Evaluar el registro único mercantil y proponer las condiciones a que debe someterse dicho registro, así como proyectar los instructivos que sea necesario expedir a efecto de coordinarlo.

9. Las demás que se le asignen de acuerdo con la naturaleza de la dependencia.

ARTÍCULO 14. Funciones Especiales del Superintendente Delegado para la Propiedad Industrial. Son funciones especiales del Superintendente Delegado para la Propiedad Industrial:

1. Decidir los recursos de apelación y queja contra los actos expedidos por los jefes de las divisiones a su cargo, excepción hecha de aquellos que le corresponden al Superintendencia de Industria y Comercio, en los términos del presente decreto.

2. Decidir las solicitudes relacionadas con los modelos de utilidad;

3. Decretar la caducidad de los derechos conferidos por las patentes de modelos de utilidad.

ARTÍCULO 15. Funciones de la División de Signos Distintivos. Son funciones de la División de Signos Distintivos:

1. Tramitar y decidir las solicitudes que se relacionen con el registro de marcas, lemas comerciales y diseños industriales, con la renovación de Marcas y lemas comerciales y con el depósito de los nombres y enseñas comerciales;

2. Decidir, conforme a la ley, las cancelaciones y caducidades de las marcas;

3. Llevar los archivos y registres de los signos distintivos;

4. Absolver las consultas de los asuntos atinentes a las funciones a su cargo;

5. Preparar el material para la elaboración de la Gaceta de Propiedad Industrial en lo referente al área a su cargo;

6. Las demás que se le asignen de acuerdo con la naturaleza de la dependencia.

ARTÍCULO 16. Funciones de la División de Nuevas Creaciones. Son funciones de la División de Nuevas Creaciones:

1. Tramitar las solicitudes de patentes de invención y de modelos de utilidad;

2. Tramitar las solicitudes de licencias obligatorias y de prórroga en los casos previstos en la ley;

3. Tramitar las licencias de explotación, traspasos, cambios de nombre y domicilié y prórrogas relacionadas con los modelos de utilidad;

4. Estudiar la procedencia de la caducidad de los derechos conferidos por las. patentes y modelos de utilidad.

5. Llevar los archivos y registres de las patentes y modelos de utilidad;

6. Absolver las consultas de los asuntos atinentes a las funciones de la división;

7. Preparar el material para la elaboración de la Gaceta de Propiedad Industrial en lo referente al àrea a su cargo;

8. Las demás que se le asignen de acuerdo con la naturaleza de la dependencia.

ARTÍCULO 17. Funciones Especiales del Superintendente Delegado para la Protección del Consumidor. Son funciones del Superintendente Delegado para la Protección del Consumidor:

1. Aplicar las medidas y sanciones a que haya lugar, de acuerdo con la función prevista en el numeral 22 del artículo 2o. del presente decreto conforme a la ley, en las materias de su competencia, en especial las previstas en el decreto ley 3466 de 1982;

2. Decidir los recursos de reposición y las solicitudes de revocatoria directa contra los actos que expida;

3. Prohibir o someter al cumplimiento de requisitos especiales la propaganda comercial de todos o algunos de los bienes o servicios que por su naturaleza o componentes sean nocivos para la salud;

4. Ejercer la función de vigilancia y control de las personas acreditadas para certificar el cumplimiento de las normas técnicas y aplicar las sanciones y medidas a que haya lugar por el incumplimiento de éstas o de cualquier norma legal o reglamentaria a que se encuentren sometidas;

5. Organizar y coordinar el sistema nacional de certificación;

6. Reconocer los certificados de conformidad, sellos, marcas y garantías de calidad expedidos en el extranjero para productos que se comercialicen en el territorio nacional;

7. Acreditar, previo el cumplimiento de los requisitos pertinentes, los laboratorios de pruebas y ensayos y de calibración que pueden efectuar la verificación de las características correspondientes de los productos sometidos al cumplimiento de normas técnicas colombianas oficiales y oficiales obligatorias.

8. Fijar el término de la garantía mínima presunta de que trata el artículo 11 del Decreto 3466 de 1982;

ARTÍCULO 18. Funciones de la División de Protección al Consumidor. Son funciones de la División de Protección al Consumidor:

1. Vigilar el cumplimiento de las disposiciones legales y reglamentarias, sobre pesas, medidas y metrología;

2. Divulgar el sistema internacional de unidades en los diferentes sectores industriales;

3. Llevar y establecer las condiciones del registro de calidad e idoneidad de bienes y servicios;

4. Instruir las investigaciones que se inicien de oficio o a solicitud de parte por violación de las disposiciones vigentes sobre protección al consumidor y en particular las contenidas en el Decreto 3466 de 1982 y las que lo adicionen o reformen;

5. Dar trámite a las quejas formuladas por los particulares y si en desarrollo de éstas se observaren violaciones a las disposiciones sobre protección al consumidor, proponer ante el Superintendente Delegado para la Protección del Consumidor las sanciones y medidas a que haya lugar;

6. Atender las consultas que se formulen relativas a las funciones que tiene asignadas;

7. Las demás que se le asignen de acuerdo a la naturaleza de la dependencia.

ARTÍCULO 19. Funciones de la División de Normas Técnicas. Son funciones la División de Normas Técnicas.

1. Vigilar y propender por el cumplimiento de todas las disposiciones que dicte el Consejo Nacional de Normas y Calidades, relativas a Normas Técnicas y Control de Calidad, cuyo control le haya sido asignado a la Superintendencia de Industria y Comercio;

2. Coordinar con la Oficina de Comunicaciones la divulgación de las normas técnicas que dicte el Consejo Nacional de Normas y Calidades, cuyo control y vigilancia haya sido asignado a la Superintendencia;

3. Elaborar los proyectos de resoluciones mediante los cuales se impongan sanciones por violación a las normas en las materias de su competencia-,

4. Atender las consultas que se le formulen relativas a las áreas de su competencia;

5. Adoptar o reconocer el uso del sello oficial de calidad o marca nacional de conformidad con normas técnicas, de acuerdo con las disposiciones que sobre el particular se expidan;

6. Acreditar la existencia y confiabilidad del control de calidad de los productos sometidos a normas técnicas colombianas oficiales y oficiales obligatorias;

7. Las demás que se le asignen de acuerdo a la naturaleza de la dependencia.

ARTÍCULO 20. Funciones de la División de Metrología. Son funciones de la División de Metrologia:

1. Prestar los servicios a la industria en lo referente a metrología dimensional, pesas y medidas, en las condiciones que establezca el gobierno;

2. Custodiar y conservar los patrones nacionales, así como promover los sistemas de medición equivalentes;

3. Realizar la comparación de los patrones nacionales según la convención internacional del metro, lo cual debe ser debidamente certificado para garantizar la autenticidad de las mediciones;

4. Establecer y mantener la jerarquía de los patrones y el sistema de patronamiento;

5. Mantener, coordinar y dar la hora legal de la República;

6. Las demás que se le asignen de acuerdo con la naturaleza de la dependencia.

ARTÍCULO 21. Funciones de la Secretaría General. Son funciones de la Secretaría General:

1. Asesorar al Superintendente de Industria y Comercio en la adopción de las políticas o planes de acción de la Superintendencia de Industria y Comercio;

2. Asistir al Superintendente de Industria y Comercio en sus relaciones con los demás organismos y mantenerlo informado de la situación de los proyectos administrativas que se relacionen con las actividades propias de la Superintendencia;

3. Atender bajo la dirección del Superintendente de Industria y Comercio, y por conducto de las distintas dependencias de la Superintendencia, la prestación de los servicios y la ejecución de los programas adoptados;

4. Velar por el cumplimiento de las disposiciones legales orgánicas de la Superintendencia y por el eficiente desempeño de las funciones técnicas y administrativas de la misma y coordinar las actividades de sus distintas dependencias;

5. Dirigir y coordinar las funciones de las Divisiones Administrativa y Financiera;

6. Notificar los actos administrativas emanados de la Superintendencia de Industria y Comercio y designar los notificadores a que haya lugar;

7. Disponer oportunamente la publicación de los actos administrativas de carácter general, conforme lo establece la ley;

8. Refrendar con su firma los actos y providencias que pongan fin a una actuación administrativa del Superintendente y los de los Superintendentes Delegados;

9. Dirigir, coordinar y controlar la prestación de los servicios de archivo y correspondencia de la Superintendencia;

10. Convocar periódicamente el Comité de Coordinación de la Superintendencia de Industria y Comercio y mantener permanentemente informados a sus miembros de las medidas administrativas que tengan relación con la marcha de la entidad;

11. Nombrar secretarios generales ad hoc en los casos que se requiera para un mejor desempeño de las funciones de certificación y autenticación que competen a la Superintendencia de Industria y Comercio;

12. Expedir las certificaciones que le corresponde a la Superintendencia de Industria y Comercio conforme a la ley;

13. Designar los funcionarios encargados de expedir las certificaciones que por razón de su competencia y en virtud de las disposiciones legales corresponde a la Superintendencia de Industria y Comercio;

14. Las demás que le delegue o señale el Superintendente de Industria y Comercio.

ARTÍCULO 22. Funciones de la División Administrativa. A la División Administrativa le corresponde desarrollar las siguientes funciones:

1. Proponer las políticas que se deben tomar en materia de administración y ejecutar las adoptadas;

2. Dirigir y supervisar la ejecución de las funciones administrativas, de recursos humanos, y de servicios generales;

3. Elaborar y actualizar, en coordinación con la oficina de planeación de la Superintendencia, los manuales administrativas y de procedimientos y velar por la racionalización operativa;

4. Planear, ejecutar y controlar la política institucional en las áreas de reclutamiento, selección, promoción, inducción y desvinculación de los recursos humanos y velar por el desarrollo de esa política;

5. Desarrollar y administrar programas tendientes a garantizar el bienestar social y laboral de los funcionarios;

6. Llevar los registros de control y las estadísticas de personal e informar al Departamento Administrativo del Servicio Civil sobre las novedades que se produzcan y las demás funciones relacionadas con la administración de personal;

7. Llevar las hojas de vida de los funcionarios del organismo y expedir las respectivos certificaciones;

8. Proponer al Superintendente de Industria y Comercio las modificaciones al manual de funciones y requisitos de la entidad, según las necesidades del servicio;

9. Coordinar la elaboración de estadísticas y demás información gerencial que requieran el Superintendente de Industria y Comercio, los Superintendentes Delegados y el Secretario General para la fijación de políticas relacionadas con la ubicación del recurso humano y la distribución de los cargos de la planta global flexible de la Superintendencia de Industria y Comercio y asesorar a las demás dependencias de la Superintendencia de Industria y Comercio en todo lo relacionado con la administración del recurso humano;

10. Mantener sistemas de control del horario del personal de la Superintendencia de Industria y Comercio y velar por su cumplimiento;

11. Coordinar los trámites necesarios para la liquidación y cancelación de las prestaciones sociales de los exfuncionarios de la Superintendencia de Industria y Comercio;

12. Elaborar la nómina y cancelación de todo tipo de erogaciones a favor de los funcionarios de la entidad.

13. Elaborar los proyectos de contratos de la Entidad;

14. Apoyar a todas las dependencias con el suministro de todos los elementos, materiales y servicios necesarios para el normal desempeño de sus funciones;

15. Adelantar los trámites correspondientes para la adquisición de bienes y contratación de servicios de acuerdo con las normas establecidas;

16. Recibir y almacenar los elementos adquiridos por la entidad;

17. Manejar y controlar los inventarios de elementos devolutivos y de consumo;

18. Colaborar con la Oficina de Planeación en la elaboración del programa anual de compras;

19. Llevar y mantener actualizado el registro de proveedores de la Superintendencia de Industria y Comercio;

20. Organizar y controlar los servicios de aseo, mantenimiento, reparaciones locativas, cafetería y los demás que se requieran;

21. Las demás que se le asignen de acuerdo con la naturaleza de la dependencia.

ARTÍCULO 23. Funciones de la División Financiera. Son funciones de la División Financiera:

1. Planear, ejecutar y controlar la política institucional en las áreas de pagaduría, presupuesto y contabilidad;

2. Colaborar en la elaboración del proyecto anual del presupuesto de la Superintendencia de Industria y Comercio y controlar su ejecución;

3. Desarrollar los procesos de programación, formulación, ejecución y control del presupuesto de acuerdo con las disposiciones legales vigentes y las políticas establecidas por el Superintendente de Industria y Comercio;

4. Controlar la rendición de cuentas y los aportes prestacionales que debe realizar legalmente la Superintendencia de Industria y Comercio;

5. Registrar la correcta y oportuna contabilización de las operaciones financieras de la Superintendencia de Industria y Comercio y elaborar sus estados financieros;

6. Controlar el manejo y custodia de los fondos de la Superintendencia de Industria y Comercio, vigilando la recepción de ingresos y control de pagos con sujeción a las normas;

7. Coordinar el oportuno recaudo de las multas impuestas por la Superintendencia de Industria y Comercio;

8. Planear y desarrollar el sistema de contabilidad general y de presupuesto, de conformidad con las normas establecidas por la Contraloría General de la República y el Ministerio de Hacienda y Crédito Publico;

9. Las demás que se le asignen de acuerdo con la naturaleza de la dependencia.

CAPITULO III
ORGANOS DE ASESORIA Y COORDINACION

ARTÍCULO 24. Consejo Asesor. El Superintendente de Industria y Comercio tendrá un Consejo Asesor para asuntos relacionados con la promoción de la competencia, integrado por cinco (5) expertos en materias empresariales, económicas o jurídicas, de libre nombramiento y remoción del Presidente de la República y cuyos honorarios serán fijados por resolución ejecutiva.

El consejo asesor será un órgano auxiliar de carácter consultivo y sus opiniones no obligarán al Superintendente de Industria y Comercio. Este último podrá convocarlo cada vez que lo crea conveniente y será obligatorio que lo oiga en los eventos a que se refieren los numerales 11, 13 y 15 inciso primero del artículo cuarto del presente decreto.

Los miembros del consejo asesor estarán sujetos a las mismas inhabilidades previstas para los miembros del consejo asesor del Superintendente Bancario.

ARTÍCULO 25. Comité de Coordinación. El Comité de Coordinación General estará residido por el Superintendente de Industria y Comercio e integrado por los Superintendentes Delegados y el Secretario General, y tendrá la función de asesorar al Superintendente de Industria y Comercio en la adopción de las políticas y planes de acción de carácter administrativo que han de regir la actividad de la Superintendencia de Industria y Comercio. Actuará como secretario del comité el Secretario General de la Superintendencia.

ARTÍCULO 26. Comisión de Personal. Comisión de Personal de la Superintendencia de Industria y Comercio se regirá por las disposiciones legales y reglamentarias vigentes.

ARTÍCULO 27. Junta de Licitaciones y Adquisiciones. La Junta de Licitaciones y Adquisiciones de la Superintendencia de Industria y Comercio asesorará en materia de compras y contratación y estará integrada por el Secretario General de la Superintendencia de Industria y Comercio, quien la presidirá, un representante del Ministerio de Desarrollo Económico, los jefes de las Divisiones Administrativa y Financiera de la Superintendencia de Industria y Comercio y los demás funcionarios que para el efecto designe el Superintendente de Industria y Comercio y cumplirá las funciones previstas en las disposiciones legales y reglamentarias vigentes. Actuará como secretario de la junta el funcionario que designe el Superintendente de Industria y Comercio.

CAPITULO IV
DISPOSICIONES LABORALES TRANSITORIAS
I. DISPOSICIONES GENERALES

ARTÍCULO 28. Campo de Aplicación.- Las normas del presente Capítulo serán aplicables a los empleados públicos que sean desvinculados de sus empleos o cargos como resultado de la reestructuración de la Superintendencia, en aplicación de lo dispuesto por el Artículo Transitorio 20 de la Constitución Política.

Para los efectos de la aplicación de este Decreto, se requiere que la supresión del empleo o cargo tenga carácter definitivo, es decir, que no se produzca incorporación en la nueva planta de personal de la entidad.

ARTÍCULO 29. Terminación de la vinculación. La supresión de un empleo o cargo como consecuencia de la reestructuración de la entidad dará lugar a la terminación del vínculo legal y reglamentario de los empleados públicos.

Igual efecto se producirá cuando el empleado publico, en el momento de la supresión del empleo o cargo, tenga causado el derecho a una pensión de jubilación y se le suprima el empleo o cargo como consecuencia de la reestructuración de la Superintendencia.

ARTÍCULO 30. Supresión de empleos. Dentro del término para llevar a cabo el proceso de reestructuración de la Superintendencia la autoridad competente suprimirá los empleos o cargos vacantes y los desempeñados por empleados públicos cuando ellos no fueren necesarios en la respectiva planta de personal como consecuencia de dicha decisión.

ARTÍCULO 31. Programa de supresión de empleos. La supresión de empleos o cargos, en los términos previstos en el artículo anterior, se cumplirá de acuerdo con el programa que apruebe la autoridad competente para ejecutar las decisiones adoptadas, dentro del plazo de seis (6) meses contados a partir de la fecha de publicación del presente Decreto.

ARTÍCULO 32. Traslado de empleados públicos. Cuando a un empleado público se le suprima el empleo o cargo como consecuencia de la reestructuración de la Superintendencia, dentro del término previsto para ejecutar esta decisión, la autoridad competente podrá ordenar su traslado a otro cargo o sede, en cuyo caso se reconocerán y pagarán los gastos de traslado previstos en la ley.

ARTÍCULO 33. De las plantas de personal. Cuando la reforma de la planta de personal de la Superintendencia implique solamente la supresión de empleos o cargos, sin modificación de los que se mantengan en la misma, no requerirá de autorización previa alguna y se adoptará con la sola expedición del Decreto correspondiente. De esta determinación se informará a la Dirección General del Presupuesto y al Departamento Administrativo del Servicio Civil.

En los demás casos, la modificación de la planta de personal deberá contar con la autorización previa de la Dirección General del Presupuesto en lo que atañe a la disponibilidad presupuestal para la planta propuesta. La citada entidad contará con un término de 30 días hábiles a partir de la fecha de la solicitud, vencido el cual, si no hubiere pronunciamiento, se entenderá que ésta fue aprobada.

Además de lo anterior, se requerirá la aprobación del Departamento Administrativo del Servicio Civil que la revisará con el único fin de constatar si los cargos se ajustan a las normas vigentes sobre clasificación y nomenclatura. Para estos efectos dicha entidad contará con un término de 15 días hábiles a partir de la fecha de la solicitud, vencido el cual, si no hubiere pronunciamiento alguno, se entenderá que ésta fue aprobada.

II. DE LAS INDEMNIZACIONES

ARTÍCULO 34. De los Empleados Públicos Escalafonados. Los empleados públicos escalafonados en carrera administrativa, a quienes se les suprima el cargo como consecuencia de la

reestructuración de la Superintendencia en desarrollo del Artículo Transitorio 20 de la Constitución Política, tendrán derecho a la siguiente indemnización:

1. Cuarenta y cinco (45) días de salario cuando el empleado tuviere un tiempo de servicio continuo no mayor de un (1) año;

2. Si el empleado tuviere mas de un (1) año de servicio continuo y menos de cinco (5), se le pagarán quince (15) días adicionales de salario sobre los cuarenta y cinco (45) días básicos del numeral 1 por cada uno de los años de servicio subsiguientes al primero, y proporcionalmente por fracción;

3. Si el empleado tuviere cinco (5) años o más de servicio continuo y menos de diez (10), se le pagarán veinte (20) días adicionales de salario sobre los cuarenta y cinco (45) días básicos del numeral 1 por cada uno de los años de servicio subsiguientes al primero, y proporcionalmente por fracción, y

4. Si el empleado tuviere diez (10) o más años de servicio continuo, se le pagarán cuarenta (40) días adicionales de salario sobre los cuarenta y cinco (45) días básicos del numeral 1 por cada uno de los años de servicio subsiguientes al primero y proporcionalmente por fracción.

ARTÍCULO 35. De los Empleados Públicos en Período de prueba. Para los mismos efectos señalados en el artículo anterior, los empleados públicos en período de prueba en la carrera administrativa a quienes se les suprima el cargo en la Superintendencia, tendrán derecho a la siguiente indemnización:

1. Cuarenta (40) días de salario cuando el empleado tuviere un tiempo de servicio continuo no mayor de un (1) año;

2. Si el empleado tuviere más de un (1) año de servicio continuo y menos de cinco (5), se le pagarán diez (10) días adicionales de salario sobre los cuarenta (40) días básicos del numeral 1 por cada uno de los años de servicio subsiguientes al primero, y proporcionalmente por fracción;

3. Si el empleado tuviere cinco (5) años o más de servicio continuo y menos de diez (10), se le pagarán quince (1 5) días adicionales de salario sobre los cuarenta (40) básicos del numeral 1 por cada uno de los años de servicio subsiguientes al primero, y proporcionalmente por fracción, y

4. Si el empleado tuviere diez (10) o más años de servicio continuo, se le pagarán treinta y cinco (35) días adicionales de salario sobre [os cuarenta (40) días básicos del numeral 1 por cada uno de los años de servicio subsiguientes al primero y proporcionalmente por fracción.

III. DE LAS BONIFICACIONES

ARTÍCULO 36. De los Empleados Públicos con Nombramiento Provisional. Los empleados públicos que hayan sido nombrados provisionalmente para desempeñar cargos de carrera administrativa, que en la planta de personal de la Superintendencia tengan una categoría igual o inferior a la de Jefe de Sección o su equivalente, a quienes se les suprima el cargo como consecuencia de la reestructuración de la entidad en desarrollo del Artículo Transitorio 20 de la Constitución Política, tendrán derecho al pago de una bonificación equivalente a 30 días de salario por cada año de servicios continuos y proporcionalmente por fracción.

IV. DISPOSICIONES COMUNES AL REGIMEN DE INDEMNIZACIONES Y BONIFICACIONES

ARTÍCULO 37. Continuidad del Servicio. Para los efectos previstos en el régimen de indemnizaciones o bonificaciones, el tiempo de servicio continuo se contabilizará a partir de la fecha de la última o la única vinculación del empleado con la Superintendencia de Industria y Comercio.

ARTÍCULO 38. Incompatibilidad con las Pensiones. Los empleados públicos a quienes se les suprima el cargo como consecuencia de la reestructuración de la Superintendencia y que en el momento de la supresión del cargo o empleo tengan causado el derecho a una pensión, no se les podrán reconocer al pagar las indemnizaciones o bonificaciones a que se refiere el presente Decreto.

Si en contravención a lo dispuesto en el inciso anterior, se paga una indemnización o bonificación y luego se reclama y obtiene una pensión, el monto cubierto por la indemnización o bonificación más intereses liquidados a la tasa de interés corriente bancario se descontará periódicamente de la pensión, en el menor número de mesadas legalmente posible.

ARTÍCULO 39. Factor Salarial. Las indemnizaciones y bonificaciones no constituyen factor de salario para ningún efecto legal y se liquidarán con base en el salario promedio causado durante el último año de servicios. Para efectos de su reconocimiento y pago se tendrán en cuenta exclusivamente los siguientes factores salariales:

1. La asignación básica mensual;
2. La prima técnica;
3. Los dominicales y festivos;
4. Los auxilios de alimentación y transporte;
5. La prima de navidad;
6. La bonificación por servicios prestados;
7. La prima de servicios;
8. La prima de antigüedad;
9. La prima de vacaciones, y
10. Los incrementos por jornada nocturna o en días de descanso obligatorio.

ARTÍCULO 40. No Acumulación de Servicios en Varias Entidades. El valor de la indemnización o bonificación corresponderá, exclusivamente, al tiempo laborado por el empleado publico en la Superintendencia de Industria y Comercio.

ARTÍCULO 41. Compatibilidad con las Prestaciones Sociales. Sin perjuicio de lo dispuesto en el artículo 38 del presente Decreto, el pago de la indemnización o bonificación es compatible con el reconocimiento y pago de las prestaciones sociales a que tenga derecho el empleado publico retirado.

ARTÍCULO 42. Pago de las Indemnizaciones o Bonificaciones.- Las indemnizaciones o bonificaciones deberán ser canceladas en efectivo dentro de los dos (2) meses siguientes a la expedición del acto de la liquidación de las mismas. En caso de retardo en el pago se causarán intereses a favor del empleado retirado, equivalentes a la tasa variable DTF que señale el Banco de la República, a partir de la fecha del acto de liquidación.

En todo caso, el acto de liquidación deberá expedirse dentro de los treinta (30) días calendario siguientes al retiro.

ARTÍCULO 43. Exclusividad del Pago.- Las indemnizaciones y bonificaciones a que se refieren los artículos anteriores únicamente se reconocerán a los empleados públicos que estén vinculados a la Superintendencia de Industria y Comercio en la fecha de vigencia del presente Decreto.

CAPITULO V
DISPOSICIONES COMPLEMENTARIAS

ARTÍCULO 44. Ambito funcional. La Superintendencia de Industria y Comercio continuará ejerciendo las funciones relacionadas con el cumplimiento de las normas sobre promoción de la competencia y prácticas comerciales restrictivas consagradas en la ley 155 de 1959 y disposiciones complementarias, para lo cual podrá imponer las medidas correspondientes cuando se produzcan actos o acuerdos contrarios a la libre competencia o que constituyan abuso de la posición dominante.

ARTÍCULO 45. Definiciones. Para el cumplimiento de las funciones a que se refiere el artículo anterior se observarán las siguientes definiciones:

1. Acuerdo: Todo contrato, convenio, concertación, práctica concertada o conscientemente paralela entre dos o más empresas.

2. Acto: Todo comportamiento de quienes ejerzan una actividad económica.

3. Conducta: Todo acto o acuerdo.

4. Control: La posibilidad de influenciar directa o indirectamente la política empresarial, la iniciación o terminación de la actividad de la empresa, la variación de la actividad a la que se dedica la empresa o la disposición de los bienes o derechos esenciales para el desarrollo de la actividad de la empresa.

5. Posición Dominante: La posibilidad de determinar, directa o indirectamente, las condiciones de un mercado.

6. Producto: Todo bien o servicio.

ARTÍCULO 46. Prohibición. En los términos de la ley 155 de 1959 y del presente decreto están prohibidas las conductas que afecten la libre competencia en los mercados, las cuales, en los términos del Código Civil, se consideran de objeto ilícito.

ARTÍCULO 47. Acuerdos Contrarios a la Libre Competencia. Para el cumplimiento de las funciones a que se refiere el artículo 44 del presente decreto se consideran contrarios a la libre competencia, entre otros, los siguientes acuerdos:

1. Los que tengan por objeto o tengan como efecto la fijación directa o indirecta de precios;

2. Los que tengan por objeto o tengan como efecto determinar condiciones de venta o comercialización discriminatoria para con terceros;

3. Los que tengan por objeto o tengan como efecto la repartición de mercados entre productores o entre distribuidores;

4. Los que tengan por objeto o tengan como efecto la asignación de cuotas de producción o de suministro;

5. Los que tengan por objeto o tengan como efecto la asignación, repartición o limitación de fuentes de abastecimiento de insumos productivos;

6. Los que tengan por objeto o tengan como efecto la limitación a los desarrollos técnicos;

7. Los que tengan por objeto o tengan como efecto subordinar el suministro de un producto a la aceptación de obligaciones adicionales que por su naturaleza no constituían el objeto del negocio, sin perjuicio de lo establecido en otras disposiciones;

8. Los que tengan por objeto o tengan como efecto abstenerse de producir un bien o servicio o afectar sus niveles de producción;

9. Los que tengan por objeto la conclusión en las licitaciones o concursos o los que tengan como efecto la distribución de adjudicaciones de contratos, distribución de concursos o fijación de términos de las propuestas.

ARTÍCULO 48. Actos Contrarios a la Libre Competencia. Para el cumplimiento de las funciones a que se refiere el artículo 44 del presente decreto, se consideran contrarios a la libre competencia los siguientes actos:

1. Infringir las normas sobre publicidad contenidas en el estatuto de protección al consumidor.

2. Influenciar a una empresa para que incremente los precios de sus productos o servicios o para que desista de su intención de rebajar los precios.

3. Negarse a vender o prestar servicios a una empresa o discriminar en contra de la misma cuando ello pueda entenderse como una retaliación a su política de precios.

ARTÍCULO 49. Excepciones. Para el cumplimiento de las funciones a que se refiere el artículo 44 del presente decreto, no se tendrán como contrarias a la libre competencia las siguientes conductas:

1. Las que tengan por objeto la cooperación en investigaciones y desarrollo de nueva tecnología.

2. Los acuerdos sobre cumplimientos de normas, estándares y medidas no adoptadas como obligatorias por el organismo competente cuando no limiten la entrada de competidores al mercado;

3. Los que se refieran a procedimientos, métodos, sistemas y formas de utilización de facilidades comunes.

ARTÍCULO 50. Abuso de Posición Dominante. Para el cumplimiento de las funciones a que se refiere el artículo 44 del presente decreto, se tendrá en cuenta que, cuando exista posición dominante, constituyen abuso de la misma las siguientes conductas:

1. La disminución de precios por debajo de los costos cuando tengan por objeto eliminar uno o varios competidores o prevenir la entrada o expansión de éstos;

2. La aplicación de condiciones discriminatorias para operaciones equivalentes, que coloquen a un consumidor o proveedor en situación desventajosa frente a otro consumidor o preveedor de condiciones análogas,

3. Los que tengan por objeto o tengan como efecto subordinar el suministro de un producto a la aceptación de obligaciones adicionales, que por su naturaleza no constituían el objeto del negocio, sin perjuicio de lo establecido por otras disposiciones;

4. La venta a un comprador en condiciones diferentes de las que se ofrecen a otro comprador cuando sea con la intención de disminuir o eliminar la competencia en el mercado.

5. Vender o prestar servicios en alguna parte del territorio colombiano a un precio diferente a aquel al que se ofrece en otra parte del territorio colombiano, cuando la intención o el efecto de la práctica sea disminuir o eliminar la competencia en esa parte del país y el precio no corresponde a la estructura de costos de la transacción.

ARTÍCULO 51. Integración de Empresas. El Superintendente de Industria y Comercio no podrá objetar los casos de fusiones, consolidación, integraciones o adquisición del control de empresas que le sean informados, en los términos del artículo 4o. de la ley 155 de 1959 cuando los interesados demuestren que puede haber mejoras significativas en eficiencia, de manera que resulte en ahorro de costos que no puedan alcanzarse por otros medios y que se garantice que no resultará en una reducción de la oferta en el mercado.

ARTÍCULO 52. Procedimiento. Para determinar si existe una infracción a las normas de promoción a la competencia y prácticas comerciales restrictivas a que se refiere este decreto, la Superintendencia de Industria y Comercio deberá iniciar actuación de oficio o por solicitud de un tercero

y adelantar una averiguación preliminar, cuyo resultado determinará la necesidad de realizar una investigación.

Cuando se ordene abrir una investigación, se notificará personalmente al investigado para que solicite o aporte las pruebas que pretenda hacer valer. Durante la investigación se practicarán las pruebas solicitadas y las que el funcionario competente considere procedentes.

Instruida la investigación se presentará al Superintendente un informe motivado respecto de si ha habido una infracción. De dicho informe se correrá traslado al investigado.

Durante el curso de la investigación, el Superintendente de Industria y Comercio podrá ordenar la clausura de la investigación cuando a su juicio el presunto infractor brinde garantías suficientes de que suspenderá o modificará la conducta por la cual se le investiga;

En lo no previsto en este artículo se aplicará el Código Contencioso Administrativo.

CAPITULO VI
DISPOSICIONES VARIAS

ARTÍCULO 53. Supresión de Funciones. Suprímanse las funciones previstas en la Ley 56 de 1985, en el Decreto 1919 de 1986, y en el Decreto 1816 de 1990, en tanto sean de competencia de la Superintendencia de Industria y Comercio. Las autoridades enquienes, con anterioridad a la expedición del presente decreto, hayan sido delegadas dichas funciones continuarán ejerciéndolas.

Suprímanse las funciones asignadas al Consejo de Política Económica y Planeación establecidas en la Ley 155 de 1959 y aquellas asignadas al Departamento Administrativo de Planeación establecidas en el Decreto 1302 de 1969.

ARTÍCULO 54. Procedimientos. Sin perjuicio de las disposiciones especiales en materia de propiedad industrial y lo previsto en el presente Decreto, las actuaciones que adelante la Superintendencia de Industria y Comercio se tramitarán de acuerdo con los principios y el procedimiento establecido en el Código Contencioso Administrativo.

ARTÍCULO 55. Grupos Internos de Trabajo. El Superintendente de Industria y Comercio podrá crear y organizar grupos internos de trabajo con el fin de desarrollar con eficiencia y eficacia los objetivos, políticas, planes y programas de la Superintendencia.

ARTÍCULO 56. Planta de Personal. El Gobierno establecerá la planta de personal de la Superintendencia de acuerdo con la estructura y funciones fijadas en este decreto, dentro de los seis (6) meses siguientes a la fecha de su vigencia.

Dicha planta entrará a regir para todos los efectos legales y fiscales a partir de la fecha de su publicación.

ARTÍCULO 57. Atribuciones de los Funcionarios de la Planta Actual.Los funcionarios de la planta actual de la Superintendencia continuarán ejerciendo las atribuciones a ellos asignadas, hasta tanto sea expedida la nueva planta de personal acorde con la estructura que se establece en el presente decreto.

ARTÍCULO 58. Autorizaciones Presupuestales. El Gobierno Nacional efectuará las operaciones y los traslados presupuestales que se requieran para la cumplida ejecución del presente Decreto.

ARTÍCULO 59. Vigencia. El presente decreto rige a partir de la fecha de su publicación y deroga los decretos 149 de 1976, 1918 de 1986 a excepción de los artículos 12 y 13, y las demás disposiciones que le sean contrarias.

PUBLIQUESE Y CUMPLASE

Dado en Santafé de Bogotá, D.C., a 30 de Diciembre de 1992

EL MINISTRO DE HACIENDA Y CREDITO PUBLICO
RUDOLF HOMMES RODRIGUEZ

EL MINISTRO DE TRABAJO Y SEGURIDAD SOCIAL
LUIS FERNANDO RAMIREZ ACUÑA

EL MINISTRO DE DESARROLLO ECONOMICO
LUIS ALBERTO MORENO MEJIA

EL DIRECTOR DEPARTAMENTO NACIONAL DE PLANEACION
ARMANDO MONTENEGRO TRUJILLO

Annex II

JAPAN

ANTIMONOPOLY ACT CONCERNING PROHIBITION OF PRIVATE MONOPOLY AND MAINTENANCE OF FAIR TRADE

(Act No 54 of April 14 1947)

CHAPTER 1 GENERAL PROVISIONS

Sec.1 [Purpose]

This Act, by prohibiting private monopolization, unreasonable restraint of trade and unfair trade practices, by preventing excessive concentration of economic power and by eliminating unreasonable restraint of production, sale, price, technology and the like, and all other unjust restriction of business activities through combinations, agreements and otherwise, aims to promote free and fair competition, to stimulate the creative initiative of entrepreneurs, to encourage business activities of enterprises, to heighten the level of employment and people's real income, and thereby to promote the democratic and wholesome development of the national economy as well as to assure the interests of consumers in general.

Sec.2 [Definitions]

(1) The term "entrepreneur" as used in this Act shall mean a person, who carries on a commercial, industrial, financial or any other business. Any officer, employee, agent or any other person who acts for the benefit of any entrepreneur shall be deemed to be an entrepreneur in regard to the application of the provisions of the following subsection and of Chapter III [trade associations] of the Act.

(2) The term "trade association" as used in this Act shall mean any combination or federation of combinations of two or more entrepreneurs having as its principal purpose the furtherance of their common business interest as entrepreneurs and includes one taking either of the following forms: Provided, That a combination or federation of combinations of two or more entrepreneurs, whose stock or other paid-up capital is owned by the constituent entrepreneurs, and whose principal purpose is to operate and which is actually operating a commercial, industrial, financial or any other business for profit shall not be included:

(i) Any association incorporated or not incorporated of which two or more entrepreneurs are members (including any position similar thereto);

(ii) Any foundation with or without juridical personality of which two or more entrepreneurs control the appointment or dismissal of directors or managers, the execution or continuation of business activities;

(iii) Any partnership of which two or more entrepreneurs are members, or any contractual combination of two or more entrepreneurs.

(3) The term "officer" as used in this Act shall mean a director, a partner with unlimited liabilities and executive power, an auditor, or any person with a similar position, a manager, or other employee in charge of business of the main or branch office.

(4) The term "competition as used in this Act shall mean a situation in which two or more entrepreneurs do or may, within the normal scope of their business activities and without undertaking any significant change in their business facilities or kinds of business activities, engage in any act prescribed in any one of the following paragraphs: Provided, That paragraph (ii) below shall not apply to such competition as provided for in Chapter IV [Stockholding, interlocking directorate, mergers and acquisitions of business]:

(i) Supplying the same or similar goods or services to the same consumers or users;

(ii) Getting supplies of the same or similar goods or services from the same supplier.

(5) The term "private monopolization" as used in this Act shall mean such business activities, by which any entrepreneur, individually or by combination or conspiracy with other entrepreneurs, or by in any other manner, excludes or controls the business activities of other entrepreneurs, thereby causing, contrary to the public interest, a substantial restraint of competition in any particular field of trade.

(6) The term "unreasonable restraint of trade" as used in this Act shall mean such business activities, by which any entrepreneur, by contract, agreement or any other concerted actions, irrespective of its names, with other entrepreneurs, mutually restrict or conduct their business activities in such a manner as to fix , maintain, or increase prices, or to limit production, technology, products, facilities, or customers or suppliers,

thereby causing, contrary to the public interest, a substantial restraint of competition in any particular field of trade.

(7) The term "monopolistic situation" as used in this Act shall mean circumstances in which each of the following market structures and undesirable market performances exist in any particular field of business where the aggregate total amount of prices (this term refers to the prices of the goods concerned less a sum equivalent to the amount of taxes levied directly on such goods) of goods of the same description (including goods capable of being supplied without making any significant change to their business facilities or kinds of business activities; hereinafter in this subsection referred to as "particular goods") and those of any other goods having a strikingly similar function and utility thereto, which are supplied in Japan (excluding those exported) or the total amount of prices (this term refers to the prices of the services concerned less a sum equivalent to the amount of taxes levied on the recipient of such services with respect thereto) of services of the same description which are supplied in Japan, during the latest one-year period designated by a Cabinet Ordinance, is in excess of fifty billion yen:

(i) where the market share (this refers to the ratio accounted for by the aggregate volume (in case it is not appropriate to be calculated by the quantity, the quantity shall be represented in terms of the amount of the prices; the same shall apply hereinafter in this paragraph) of the particular goods and any other goods having a strikingly similar function and utility thereto or by the volume of the services, which are supplied by the entrepreneur or entrepreneurs concerned, to total volume of those supplied in Japan (excluding those exported) of an entrepreneur exceeds one-half or where the combined market share of two entrepreneurs exceeds three-fourths during a given one-year period;

(ii) Where there exist conditions which make it extremely difficult for any other entrepreneur to be newly engaged in the said particular field of business;

(iii) Where the increase in the price of the particular goods or services supplied by the entrepreneur concerned has been remarkable or the decrease therein has been slight for a considerable period of time in the light of changes occurred in the supply and demand, or in the cost of supplying for such goods or services during such period, and where, in addition thereto, the said entrepreneur has fallen under any one of the following requirements during said period:

(a) That the entrepreneur has earned profit rate far exceeding that which is

established by a Cabinet Ordinance as the norm for the class of business designated by such Cabinet Ordinance to which the said entrepreneur belongs; or

(b) That the entrepreneur has expended a level of selling costs and general and administrative expenses far exceeding one which is considered as the norm for the field of business to which the entrepreneur belongs.

(8) In the event any change has occurred in the economic conditions resulting in a drastic change in domestic industrial shipments and wholesale prices, the amount of prices as prescribed in the preceding subsection may be revised by virtue of a Cabinet Ordinance to reflect such change.

(9) The term "unfair trade practices" as used in this Act shall mean any act coming under any one of following paragraphs, which tends to impede fair competition and which is designated by the Fair Trade Commission as such:

(i) Unjustly discriminating against other entrepreneurs;

(ii) Dealing at unjust prices;

(iii) Unjustly inducing or coercing customers of a competitor to deal with oneself;

(iv) Dealing with another party on such terms as will restrict unjustly the business activities of the said party;

(v) Dealing with another party by unjust use of one's bargaining position;

(vi) Unjustly interfering with a transaction between an entrepreneur who competes in Japan with oneself or the company of which oneself is a stockholder or an officer and his another transacting party; or, in case such entrepreneur is a company, unjustly inducing, instigating, or coercing a stockholder or an officer of such company to act against the interest of such company.

CHAPTER II PRIVATE MONOPOLIZATION AND UNREASONABLE RESTRAINT OF TRADE

Sec.3 [Prohibition of private monopolization or unreasonable restraint of trade]

No entrepreneur shall effect private monopolization or unreasonable restraint of trade.

Sec.4 [Prohibition of particular concerted practices]

Deleted. (Act No.259 of 1953)

Sec.5 [Prohibition of private control organization]

Deleted. (Act No.259 of 1953)

Sec.6 [Prohibition of particular international agreements or contracts, filing requirement]

(1) No entrepreneur shall enter into an international agreement or an international contract which contains such matters as constitute unreasonable restraint of trade or unfair trade practices.

(2) An entrepreneur who has entered into an international agreement or an international contract (limited to only such an agreement or a contract that belongs to the types which are prescribed by the Rules of the Fair Trade Commission as tending to contain such matters as constitute unreasonable restraint of trade or unfair trade practices) shall, in accordance with the Rules of the Fair Trade Commission, file a report thereof with the Commission, accompanied by a copy of the said agreement or contract (in the case of an oral agreement or contract, a document describing the contents thereof), within thirty days from the conclusion of such agreement or contract.

Sec.7 [Elimination measures]

(1) In case there exists any act in violation of the provision of Section 3 prohibition of private monopolization or unreasonable restraint of trade], or subsection (1) or (2) of the preceding section, the Fair Trade Commission may, in accordance with the procedures as provided for in Division II [procedures], Chapter VIII, order the entrepreneur concerned to file reports, or to cease and desist from such acts, to transfer a part of his business, or to take any other measures necessary to eliminate such acts in violation of the said provisions.

(2) The Fair Trade Commission may, when it finds it particularly necessary, even when an act in violation of the provisions of Section 3 [prohibition of private monopolization or unreasonable restraint of trade] has already ceased to exist, order

the entrepreneurs concerned, in accordance with the procedures as provided for in Division II [procedures], Chapter VIII, to take measures to publicize that the said act has been discontinued and order any other measures necessary to ensure elimination of the said act: Provided, That the foregoing shall not apply to cases where one year has elapsed since the date of discontinuation of the said act without recommendation being given to the entrepreneur concerned or without the hearing procedures being initiated with respect to the said act.

Sec.7-2 [Surcharges]

(1) In case any entrepreneur effects an unreasonable restraint of trade or enters into an international agreement or an international contract containing such matters as constitute an unreasonable restraint of trade, which pertains to the price of goods or services or results in affecting in effect the price of such goods or services by curtailing the volume of supply thereof, the Fair Trade Commission shall order the entrepreneur concerned, in accordance with the procedures as provided for in Division II [procedures], Chapter VIII, to pay to the Treasury a surcharge of an amount equivalent to an amount arrived at by multiplying the sales amount of such goods or services, computed in accordance with the method prescribed by a Cabinet Ordinance, for the period from the date on which the entrepreneur was engaged in the business activities as implementation of such conduct to the date on which the entrepreneur ceased to engage in the business activities as implementation of such conduct (in case such period exceeds three years, the period shall be for three years retroactively from the date on which the entrepreneur ceased to engage in the business activities as implementation of such conduct; hereinafter referred to as "period of such implementation") by six percent (or by two percent for retail business or by one percent for wholesale business): Provided, That in case the amount thus computed falls below five hundred thousand yen, the Commission shall not order the payment of such a surcharge.

(2) In the case of the preceding subsection, the term "six percent" appearing in the preceding subsection shall be "three percent" and the term "two percent" shall be "one percent," if the entrepreneur falls under any one of the following paragraphs:

(i) Any company whose capital or subscription is not more than 100 million yen and any company or individual whose pay-roll employees are not more than 300 persons, whose main activity is to carry on business in the fields of manufacturing, mining,

transportation and other kinds of business (excluding the kinds of business stipulated in paragraph (ii) of this subsection and the kinds of business stipulated by the Cabinet Ordinance pursuant to paragraph (iii) of this subsection);

(ii) Any company whose capital or subscription is not more than 10 million yen and any company or individual whose pay-roll employees are no more than 50 persons, whose main activity is to carry on business in the fields of retail trade or services (excluding the kinds of business stipulated in the Cabinet Ordinance pursuant to paragraph (iii) of this subsection); and any company whose capital or subscription is not more than 30 million yen and any company or individual whose pay-roll employees are not more than 100 persons, whose main activity is to carry on business in the wholesale trade (excluding the kinds of business stipulated in the Cabinet Ordinance pursuant to paragraph (iii) of this subsection; or

(iii) Any company whose capital or subscription is not more than that specified by the Cabinet Ordinance for each kind of business and any company or individual whose pay-roll employees are not more than that specified by the Cabinet Ordinance for each kind of business, whose main activity is to carry on business in fields specified by such Cabinet Ordinance.

(3) Any person who has received an order under the provisions of subsection (1) shall pay the surcharges as provided for in subsection (1) and (2) of this section.

(4) In case the amount of surcharge calculated in accordance with the provisions of subsection (1) or (2) of this section contains a fraction less than ten thousand yen, such fraction shall be disregarded.

(5) In the case the entrepreneur who has committed an act in violation of the provision of subsection (1) above is a company and if such company has ceased to exist through a merger with another company, the violation of such company shall be considered as a violation of the merging company or consolidated company as a result of the merger, and the provisions of the preceding subsections shall apply thereto.

(6) When a period of three years has elapsed from the date of expiration of the period of such implementation (or when a period of one year has elapsed from the date on which the hearing procedures ended in case such hearing procedures had been initiated with respect to such a violation (in case the expiration of the three-year period following the expiration of the period of such implementation, then the date on which

the three-year period expired), the Fair Trade Commission shall not order such entrepreneur to pay a surcharge for such violation: Provided, That the foregoing shall not apply to cases where the Fair Trade Commission has ordered to pay the surcharge for the said violation to the Treasury under the provisions of Section 48-2(1) [surcharge payment order] and thereafter.

CHAPTER III TRADE ASSOCIATIONS

Sec.8 [Prohibited acts of a trade association, filing requirement]

(1) No trade association shall engage in any acts which come under any one of the following paragraphs:

(i) Substantially restraining competition in any particular field of trade;

(ii) Entering into an international agreement or an international contract as provided for in Section 6(1);

(iii) Limiting the present or future number of entrepreneurs in any particular field of business;

(iv) Unjustly restricting the functions or activities of the constituent entrepreneurs (meaning an entrepreneur who is a member of the trade association; hereinafter the same);

(v) Causing entrepreneurs to employ such acts as constitute unfair trade practices.

(2) Every trade association shall, when formed, in accordance with the rules of the Fair Trade Commission, file a report thereof with the Commission within thirty days as from the date of its formation.

(3) When any change has occurred to the matters reported under the preceding subsection, the trade association concerned shall, in accordance with the Rules of the Fair Trade Commission, file a report thereof with the Commission, within two months after the end of the business year during which such change occurred.

(4) Every trade association shall, when dissolved, in accordance with the Rules of the Fair Trade Commission, file a report thereof with the Commission, within thirty days as from the date of its dissolution.

Sec.8-2 [Elimination measures against prohibited acts of trade associations]

(1) When there exists any act in violation of the provisions of the preceding section, the Fair Trade Commission may, in accordance with the procedures as provided for in Division II [procedures], Chapter VIII, order the trade association concerned to file a report, or to cease and desist from such act, to dissolve the said association, or to take any other measures necessary to eliminate the said act.

(2) The provisions of Section 7(2) [measures against already ceased violation] shall apply mutatis mutandis to any act in violation of provisions of subsection (1)(i), (iv) or (v) of the preceding section.

(3) The Fair Trade Commission may, in accordance with the procedures as provided for in Division II [procedures], Chapter VIII, in ordering a trade association to take any of the measures set forth in subsection (1) above or Section 7(2) applicable mutatis mutandis under the provisions of the preceding subsection, when it finds it particularly necessary, at the same time order an officer, manager or constituent entrepreneur (including other entrepreneur when a constituent entrepreneur is acting for the benefit of the entrepreneur; the same shall apply in Section 48 [recommendation to the violator to take elimination measures] (1) and (2)) of the said association to take measures necessary to ensure the measures provided for in subsection (1) above or Section 7(2) applicable mutatis mutandis under the provisions of the preceding subsection.

Sec.8-3 [Surcharges against constituent entrepreneurs]

The provisions of Section 7-2 [Surcharge] shall apply mutatis mutandis to cases where an act is committed in violation of the provisions of Section 8(1) [prohibited acts of a trade association] (i) or (ii) (applying only to such an entrepreneur who is a party to an international agreement or an international contract which contains such matters as constitute an unreasonable restraint of trade). In this case, the term "any entrepreneur" appearing in subsection (1) of Section 7-2 shall read "any trade association", the term "entrepreneur concerned" appearing therein shall read "the constituent entrepreneur" (other entrepreneur when a constituent entrepreneur is acting for the benefit of the entrepreneur; the same shall apply hereinafter in this section) of the trade association concerned and the term "such entrepreneur" appearing

in subsection (2) of the said section shall read "the constituent entrepreneur of such trade association concerned."

CHAPTER III-II MONOPOLISTIC SITUATIONS

Sec. 8-4 [Measures against a monopolistic situation]

(1) When there exists a monopolistic situation, the Fair Trade Commission may order the entrepreneur concerned, in accordance with the procedures as provided for in Division II [procedures], Chapter VIII, to transfer a part of his business or to take any other measures necessary to restore competition with respect to such goods or services: Provided, That the foregoing shall not apply to cases where the Commission finds that such measures may reduce the scale of business of the said entrepreneur to such an extent that the costs required for the supply of goods or services which such entrepreneur supplies will rise sharply, undermine its financial position and make it difficult for the entrepreneur to maintain its international competitiveness, or where other alternative measures may be taken which the Commission finds sufficient to restore competition with respect to such goods or services.

(2) In issuing an order prescribed in the preceding subsection, the Fair Trade Commission shall give consideration, based on the items prescribed in each of the following paragraphs, to the smooth conduct of business activities by the entrepreneurs concerned, and those associated with them and the stabilization of livelihood for those employed by such entrepreneurs:

(i) Assets, income and expenditures and other aspects of accounting;

(ii) Officers and employees;

(iii) Location of factories, workyards and offices and other locational conditions;

(iv) Aspects of business facilities and equipments;

(v) The substance of patent rights, trademark rights and other intellectual property rights and other technological features;

(vi) Capacity for and situations of production and sales, etc.;

(vii) Capacity for and situations of obtaining funds and materials, etc.;

(viii) Situations of supply and distribution of goods or services.

CHAPTER IV STOCKHOLDINGS, INTERLOCKING DIRECTORATES, MERGERS AND ACQUISITIONS OF BUSINESS

Sec.9 [Prohibition of holding company]

(1) No holding company shall be established.

(2) Any company (including a foreign company; hereinafter the same) shall not operate as a holding company in Japan.

(3) The term "holding company" as used in the preceding two subsections shall mean a company whose principal business is to control the business activities of a company or companies in Japan by means of holding of stock (including shares of partnership; hereinafter the same).

Sec.9-2 [Restriction on total amount of stockholding by a giant non-financial company]

(1) Any stock company whose business is other than financial (this term refers to those engaged in banking, trust banking, insurance, mutual financing and securities businesses; the same meaning shall apply hereinafter) and whose capital is larger than ten billion yen or whose net assets (this term refers to the sum of an amount arrived at by deducting the total liabilities from the total assets listed in the latest balance sheet and the amount by which the net assets have increased as a result of an issuance of new stock in accordance with the provisions of Section 280-2 of the Commercial Code (Act No.48 of 1899) or as a result of an issuance of new stock by the exercise of pre-emptive right endowed by cum right corporate bonds, or as a result of a merger or the conversion of corporate bonds, if any; hereinafter the same meaning shall apply in this section) are larger than thirty billion yen shall not acquire or hold stock of companies in Japan in excess of its capital or its net assets, whichever is larger (hereinafter referred to as "the base amount"), if by so doing total amount of acquiring price of such stocks (another price if it is listed so in the latest balance sheet; the same meaning shall apply hereinafter) which it has acquired or holds exceeds the base amount: Provided, That the foregoing shall not apply to the acquisition or holding of such stock in the cases provided for in any one of the following paragraphs:

(i) The acquisition or holding of stock of a company in Japan which has been prescribed by a Cabinet Ordinance and which has been invested in by a juridical person

established by the government, or a local public authority, or a juridical person established under a special law whose total amount of capital is owned by the government or whose liabilities may be contractually guaranteed by the government;

(ii) The acquisition or holding of stock of a company in Japan, as prescribed by a Cabinet Ordinance, engaged in a business contributive to the development of industries and the progress of economy and societies, which requires large sum of funds of such a magnitude as to make it difficult to procure by ordinary means;

(iii) The acquisition or holding of stock of a company in Japan whose purpose is to engage in any one or two or more of the following businesses, and which performs business activities pursuant to the objective thereof;

(a) Business undertaken outside Japan (including the business undertaken in Japan which is closely connected with, and incidental to, such business);

(b) Business of investment or long-term loans to foreign governments or foreign juridical persons (including those businesses which are closely connected with, and incidental to, such businesses, hereinafter referred to as "investment and financing business");

(c) Investment and financing business to the companies provided for in the preceding paragraph; or

(d) Investment and financing business to the companies which fall under the purview of this paragraph;

(iv) The acquisition or holding of stock of a company in Japan, as prescribed by a Cabinet Ordinance, engaged in the business provided for in paragraph (ii) above, and in the investment and financing business as provided for in the preceding paragraph;

(v) The acquisition or holding of stock of a company in Japan, established by partially separating the business actually performed by itself, whose issued stock is wholly acquired or owned immediately after the establishment by itself: Provided, That this shall apply only to cases where such stock is held for two years or less from the said company's establishment;

(vi) The acquisition or holding of stock of a company in Japan, established by joint investment with a foreign government, foreign juridical person or foreign national (referred to as "co-investment company" in subsection (5) below) when it is particularly necessary for the operation of its business to take the form of such a co-investment company therein: Provided, That this shall apply only to such cases where authorization of the Fair Trade Commission is obtained in advance in accordance with the provisions of the Rules of the Commission;

(vii) The acquisition or holding of new stock acquired or held due to a stockholder

allocation on currently held stock (excluding the stock held under the provisions of the paragraphs (i) to (iv) inclusive, of the preceding paragraph): Provided, That this shall apply only to cases where such stock is held for two years or less from the date of its acquisition;

(viii) The acquisition or holding of stock as a result of the enforcement of a lien, pledge, mortgage, or as a result of payment in kind: Provided, That this shall apply only to cases where such stock is held for one year or less from the date of its acquisition (or for one year or less from the date on which it is decided to conclude rehabilitation procedures, in case the stock is deemed to have been acquired through payment in kind under the provision of Section 265 [special provisions to Section 9-2 or Section 11 of the Act] of the Company Rehabilitation Act (Act No.172 of 1952)]; or

(ix) The acquisition or holding of stock of a company in Japan for an imperative reason; Provided, That this shall apply only to cases where approval of the Fair Trade Commission is obtained in advance (or without delay after the acquisition of such stock, in case it is acquired under urgent and imperative circumstances) in accordance with provisions of the Rules of the Fair Trade Commission , and where such stock is held for the period or less stipulated by such approval.

(2) If, as a result of a decrease in the base amount of the stock company as provided for in the preceding subsection, the total amount of the acquisition price of stock held in companies in Japan (excluding the holdings which fall under any one of the paragraphs of the said subsection; the same shall apply in the following subsection) turns out to be in excess of the base amount, the total amount of such acquisition price shall be deemed as the base amount for the purpose of applying the provisions of the preceding subsection during the five years beginning from the date on which the acquisition price exceeded the base amount.

(3) In case the base amount decreases still more during the five-year period under the preceding subsection, the base amount determined prior to such decrease or the total amount of the acquisition price of stock held in companies in Japan as of the date on which the period as provided for in the preceding subsection expired, whichever is the smaller, shall be deemed as the base amount for the purpose of applying the provisions of subsection (1) above during the five-year period. The same shall apply to cases where the base amount decreased still more during the five-year period immediately following such decrease.

(4) The provisions of the preceding two subsections shall not apply to cases where the base amount has increased beyond the amount which is deemed as the base amount then effective under these provisions.

(5) When the Fair Trade Commission grants authorization under subsection (1) (vi), it shall, in advance, consult with the Minister of Finance and the competent minister having jurisdiction over the business in which the co-investment company is engaged.

(6) When the Fair Trade Commission grants authorization under subsection (1) (vi) or approval under paragraph (ix) of the said subsection, the Commission shall, in advance, consult with the minister or ministers who are empowered by virtue of a special law to make recommendations or give instructions with respect to the financial management of the companies which seek to acquire stock and are subject to such authorization or approval.

(7) In case a company which falls under subsection (1) (iii) above ceases to become subject thereto, the provision of the said subsection shall not apply to the holding of stock of such company for one year immediately following the date on which such company ceased to fall thereunder.

(8) In case any company acquires stock of another company in Japan under urgent and imperative circumstances that are subject to an ex post facto approval under subsection (1) (ix) above but fails to obtain such approval, the provision of the said subsection shall not apply to the holding of such stock for one month immediately following the date on which such company failed to obtain such approval.

(9) In the event, as a result of a change in economic conditions, any drastic increase or decrease occurs in the amounts of capital and net assets of the stock companies which rank among the largest two hundred in terms of the size of their capital and net assets (excluding those engaged in financial business; the same shall apply in this subsection), the amount stipulated in subsection (1) may be revised by virtue of a Cabinet Ordinance to reflect such change.

Sec.10 [Prohibition of particular stockholding by a company, filing requirement]

(1) No company shall acquire or hold stock of a company or companies in Japan

where the effect of such acquisition or holding of stock may be substantially to restrain competition in any particular field of trade, or shall acquire or hold stock of a company or companies in Japan through unfair trade practices.

(2) Every company in Japan whose business is other than financial and whose total assets (meaning total amount of the assets according to the latest balance sheet; hereinafter the same) exceed two billion yen or every foreign company whose business is other than financial, shall, in case it holds stock of another company or companies in Japan (including the stock held in the form of trust property of pecuniary or security trust of which it is a trustor or beneficiary and can exercise its voting rights or where such trustor or beneficiary can issue instructions regarding the exercise of such voting rights), submit, in accordance with the Rules of the Fair Trade Commission, a report on such stock held in its name or in the name of trustee as of the end of every business year to the Commission within three months therefrom.

Sec.11 [Restriction on stockholding rate by a financial company]

(1) No company engaged in financial business shall acquire or hold stock of another company in Japan if by doing so it holds in excess of five percent (ten percent in the case of an insurance company) of the total outstanding stock: Provided, That the foregoing shall not apply to such cases where authorization of the Fair Trade Commission is obtained in advance in accordance with the Rules of the Fair Trade Commission, or to such cases failing under any one of the following paragraphs:

(i) Acquisition or holding of stock as a result of the enforcement of lien, pledge, mortgage, or of payment in kind;

(ii) Acquisition or holding of stock by a company engaging in securities in the course of its business;

(iii) Acquisition or holding of stock in the form of trust property of pecuniary or security trust; Provided, That this shall apply only to cases where the trustor or the beneficiary of such trust property can exercise his voting rights or where such trustor or beneficiary can issue instructions regarding the exercise of such voting rights.

(2) Any company whose business is financial, being desirous, in the case of paragraphs (i) and (ii) of the preceding subsection, of holding stock of another company or companies in Japan over the period of one year from the date of such acquisition in excess of five percent of the total outstanding stock, shall, in accordance with the Rules

of the Fair Trade Commission, obtain authorization in advance from the Commission. The authorization of the Fair Trade Commission in such case shall be granted with a condition that the company engaged in financial business should promptly dispose of the said stock.

(3) When the Fair Trade Commission grants authorization under the provisions of the two preceding subsections, it shall, in advance, consult with the Minister of Finance.

Sec.12 [Restriction on acquisition of corporate bonds]

Deleted. (Act No.214 of 1948)

Sec.13 [Prohibition of particular interlocking directorates, filing requirement]

(1) Neither an officer nor an employee (meaning in this section a person other than officers in the regular employment of a company) of a company shall hold at the same time a position as an officer in another company or companies in Japan wherever the effect of such an interlocking directorate may be substantially to restrain competition in any particular field of trade.

(2) No company shall coerce another company or companies in Japan in competition with it in Japan, through unfair trade practices, to admit one of its officers concurrently to the position of an officer or an employee of the latter company or companies, or to admit its employee, concurrently to the position of an officer of such company or companies.

(3) Every officer or employee of a company who holds concurrently the position of an officer in another company or companies in Japan in competition with it in Japan, shall, in case the total assets of either one company exceed two billion yen, file, in accordance with the Rules of the Fair Trade Commission, a report thereof with the Commission within thirty days as from the date of assuming the position of such an officer.

Sec.14 [Prohibition of particular stockholding by a person other than a company, filing requirement]

(1) No person other than a company shall acquire or hold stock of another company or companies in Japan whenever the effect of such acquisition or holding of stock may be substantially to restrain competition in any particular field of trade, or shall acquire or hold stock of another company or companies in Japan through unfair trade practices.

(2) Every person other than a company shall, in case he has come to hold stock of two or more companies mutually competing in Japan in excess of ten per cent of the total outstanding stock of the respective company, file, in accordance with the Rules of the Fair Trade Commission, a report on such stock with the Commission within thirty days as from the date of such holding.

Sec.15 [Prohibition of particular mergers, filing requirement]

(1) No company in Japan shall effect a merger coming under any one of the following paragraphs:

(i) Where the effect of a merger may be substantially to restrain competition in any particular field of trade;

(ii) Where unfair trade practices have been employed in the course of the merger.

(2) Every company in Japan, which is desirous of becoming a party to a merger shall, in accordance with the provisions of the Rules of the Fair Trade Commission, file a report with the Commission.

(3) No company in Japan shall, in the cases coming under the preceding subsection, effect a merger until the expiration of a thirty-day waiting period from the date of the issuance of the receipt of the said report: Provided, That the Fair Trade Commission may, when it finds it necessary, shorten the said period, or extend it by an additional period of time not exceeding sixty days with the consent of the companies concerned.

(4) The Fair Trade Commission shall, where it determines to initiate hearing proceedings or makes a recommendation with a view to ordering the necessary measures relating to the merger in question pursuant to the provisions of Section 17-2 [elimination measures against unlawful acts relating to a company, etc.], do so before the expiration of a thirty-day waiting period as provided for in the preceding subsection, or of any shortened or extended period under the proviso thereof: Provided, That the foregoing provisions shall not apply in cases where there has been a false statement

with respect to important matters in the report specified in subsection (2) above.

Sec.16 [Prohibition of particular acquisitions of business, etc., filing requirement]

The provisions of the preceding section shall apply mutatis mutandis to an act of a company coming under any one of the following paragraphs:

(i) Acquiring the whole or a substantial part of the business in Japan of another company;

(ii) Acquiring the whole or a substantial part of the fixed assets used for the business in Japan of another company;

(iii) Taking on lease of the whole or a substantial part of the business in Japan of another company;

(iv) Undertaking the management of the whole or a substantial part of the business in Japan of another company;

(v) Entering into a contract which provides for a joint profit and loss account for business in Japan with another company.

Sec17 [Prohibition of evasion]

No acts in whatever form or manner shall be committed to evade such prohibitions or restrictions as provided for by Section 9 to the preceding section inclusive [prohibition of holding company, restriction on total amount of stockholding by a giant non-financial company, prohibition of particular stockholding by a company, restriction on stockholding rate by a financial company, prohibition of particular interlocking directorates, prohibition of particular stockholding by a person other than a company, prohibition of particular mergers, prohibition of particular acquisition of business, etc.].

Sec.17-2 [Elimination measures against unlawful acts relating to a company, etc.]

(1) Where there exists any act in violation of the provisions of Section 9-2(1) [restriction on total amount of stockholding by a giant non-financial company], Section 10 [prohibition of particular stockholding by a company], Section 11(1) [restriction on stockholding rate by a financial company], Section 15(1) [prohibition of particular mergers] (including such cases where the said provisions are applied mutatis mutandis by Section 16 [prohibition of particular acquisition of business, etc.]) or the preceding

section , the Fair Trade Commission may, in accordance with the procedures as provided for in Division II (procedures), Chapter VIII, order the entrepreneur concerned to submit a report, or to dispose of the whole or a part of his stocks to transfer a part of his business, or to take any other measures necessary to eliminate such acts in violation of the said provisions.

(2) Where there exists any establishment of an act in violation of the provisions of Section 9(1) [prohibition of establishment of a holding company] or (2) [prohibition of operation as a holding company], Section 13 [prohibition of particular interlocking directorates], Section 14 [prohibition of particular stockholding by a person other than a company] or the preceding section, the Fair Trade Commission may, in accordance with the procedures as provided for in Division II [procedures], Chapter VIII, order the person violating such provisions to submit a report or to dispose of the whole or a part of his stocks, to resign from his position as an officer in a company, or to take any other measures necessary to eliminate such acts in violation of the said provisions.

Sec.18 [Measures against the establishment of a holding company or an illegal merger]

The Fair Trade Commission may, in case where any company has been established in violation of the provisions of Section 9(1) [prohibition of establishment of a holding company] or companies that have merged in violation of the provisions of Section 15(2) [filing of merger] and (3) [waiting period of merger], bring a suit to have the said establishment or merger declared null and void.

CHAPTER IV-II PARALLEL PRICE INCREASES

Sec.18-2 [Reporting requirement on parallel price increases]

(1) If, in any particular field of business where the total price of goods (this term refers to the price of the goods concerned less an amount equivalent to the amount of taxes levied directly on such goods) of the same description supplied in Japan (excluding those exported; hereinafter the same in this section) or the total prices of services (this refers to the price of the services concerned less an amount equivalent to the amount of taxes levied on the recipients of such services with respect thereto) of the same description supplied in Japan during a one-year period designated by a Cabinet

Ordinance, is in excess of thirty billion yen, the ratio of the total amount of such goods or services supplied by the three entrepreneurs, which rank among the three largest entrepreneurs in Japan in terms of volume of supply (this refers to the quantity of goods or services of the same description which one entrepreneur supplied during a given one-year period, and in case it is not appropriate to be calculated by the quantity, the quantity shall be represented in terms of the amount of their prices; hereinafter the same meaning in this section) to the aggregate volume of such goods or services of the same description supplied in Japan during such one-year period (hereinafter referred to as "the aggregate volume") exceeds seven tenths, and if two or more major entrepreneurs (including the largest one) (this term means the five entrepreneurs each of which account for one twentieth or more of the aggregate volume and rank among the five largest entrepreneurs in Japan; hereinafter the same meaning in this section) raise the price they use as the basis of their transactions in such goods or services of the same description by an identical or similar amount or percentage within a period of three months, the Fair Trade Commission may ask such major entrepreneurs for a report, furnishing a statement of reasons for such a raise in the price of such goods or services: Provided, That this shall not apply to price increases effected by entrepreneurs whose price of such goods or services is authorized or approved by, or filed with the competent minister in charge of the business in which the said entrepreneurs are engaged (in case such price shall be filed with the competent minister, this shall apply only to such cases where the competent minister has the authority to order a change in such price).

(2)In the event any change has occurred in the economic conditions resulting in a drastic change in domestic industrial shipments and wholesale prices, the amount of prices as prescribed in the preceding subsection may be revised by virtue of a Cabinet Ordinance to reflect such change.

CHAPTER V UNFAIR TRADE PRACTICES

Sec.19 [Prohibition of unfair trade practices]

No entrepreneur shall employ unfair trade practices.

Sec.20 [Measures against unfair trade practices]

(1) When there exists any act in violation of the preceding section, the Fair Trade Commission may, in accordance with the procedures as provided for in Division II [procedures], Chapter VIII, order the entrepreneur concerned to cease and desist from the said act, to delete the clauses concerned from the contract and to take any other measures necessary to eliminate the said act.

(2) The provisions of Section 7(2) [measures against already ceased violations] shall apply mutatis mutandis to an act in violation of the preceding section.

CHAPTER VI EXEMPTIONS

Sec.21 [Natural monopoly]

The provisions of this Act shall not apply to such acts relating to the production, sale, or supply as are done in the proper course of business by a person engaging in railway, electricity, gas, or any other business constituting a monopoly by the inherent nature of the said business.

Sec.22 [Legitimate acts under special laws and orders]

(1) The provisions of this Act, where there exists a special law concerning a specific industry, shall not apply to legitimate acts of an entrepreneur or a trade association conducted in accordance with such a special law or an order based upon such law.

(2) Such special laws as provided for in the preceding subsection shall be specified by separate law.

Sec.23 [Acts under intellectual property rights]

The provisions of this Act shall not apply to such acts recognizable as the exercise of rights under the Copyright Act, the Patent Act, the Utility Model Act, the Design Act or the Trademark Act.

Sec.24 [Acts of cooperatives]

The provision of this Act shall not apply to such acts of a cooperative (including a federation of cooperatives) which conforms to the requirements stipulated in each of the following paragraphs and which has been formed in accordance with the provisions of a separate law: Provided, That the foregoing shall not apply to such cases where unfair trade practices are employed, or where competition in any particular field of trade is substantially restrained, resulting in unjust rise of prices:

(i) Its purpose shall be mutual aid among small scale entrepreneurs or consumers;

(ii) It shall be voluntarily formed; and the participation in and withdrawal from the cooperative shall be voluntary;

(iii) Each member shall possess equal voting right; and

(iv) If distribution of profits among members is contemplated, the limits shall be stipulated in a law or a Cabinet Ordinance, or in the articles of an association.

Sec.24-2 [Resale price maintenance contracts]

(1) The provision of this Act shall not apply to legitimate acts performed by an entrepreneur who produces or sells a commodity, the uniform quality of which is easily identifiable and which is designated by the Fair Trade Commission, with another entrepreneur who buys such commodity, in order to fix and maintain the resale price thereof (this term means hereinafter the price at which the latter entrepreneur or a third entrepreneur who purchases from him sells such commodity): Provided, That the foregoing shall not apply if the said act tends to be grossly injurious to the interest of consumers in general, or if it is done against the will of the entrepreneur who produces the said commodity by an entrepreneur whose business is to sell the said commodity.

(2) The Fair Trade Commission shall not designate a commodity under the provisions of the preceding subsection unless it comes under each of the following paragraphs:

(i) The commodity shall be for the dairy use by the consumers in general; and

(ii) Free competition shall exist with respect to the commodity.

(3) The designation of a commodity under the provisions of subsection (1) above shall be made by a notification.

(4) Legitimate acts performed by an entrepreneur whose business is to publish copyrighted works or by an entrepreneur whose business is to sell such published

works, in order to fix and maintain with another entrepreneur who buys such works the resale price thereof, shall be exempted from the application of the provisions of Act.

(5) The organization formed in accordance with the provisions of any one of the following Acts shall not be included in the term of "another entrepreneur" who buys commodities or copyrighted works as provided for in subsection (1) or the preceding subsection: Provided, That the foregoing provisions shall, in the case of the organizations formed under the provisions of any one of the Acts mentioned in paragraphs (viii) and (viii-ii) hereunder, only apply to cases where a business cooperative, a minor business cooperative, a federation of cooperatives, a commercial and industrial association or a federation of commercial and industrial associations purchases such commodity as provided for in subsection (2) above or copyrighted works as provided for in subsection (4) above, for the consumption of persons directly or indirectly constituting the said business cooperative, a federation of cooperatives, commercial and industrial associations or a federation of commercial and industrial associations:

(i) National Public Service Act;
(ii) Agricultural Cooperatives Act;
(iii) National Public Service, etc., Mutual Aid Association Act;
(iii-ii) Local Public Service, etc., Mutual Aid Association Act;
(iv) Consumer Cooperatives Act;
(v) Fisheries Cooperatives Act;
(vi) Public Corporation, etc. Labor Relations Act;
(vii) Labor Unions Act;
(viii) Small and Medium Sized Enterprise, etc., Cooperatives Act;
(viii-ii) Small and Medium Sized Enterprises Organization Act;
(ix) Local Public Service Act;
(x) Forestry Cooperatives Act;
(xi) Local Public Enterprise Labor Relations Act.

(6) When an entrepreneur as stipulated in subsection (1) above has fixed the resale price under the said subsection and has entered into contract for the purpose of maintaining it, he shall, in accordance with provisions of the Rules of the Fair Trade Commission, file a report thereon with the Commission within thirty days from the date of the conclusion of the said contract: Provided, That the foregoing shall not apply

if the Fair Trade Commission stipulates otherwise in its Rules.

Set. 24-3 [Depression cartels]

(1) Where there exists an extreme disequilibrium of supply and demand for a particular commodity, resulting in circumstances falling under each of the following paragraphs, the provisions of this Act shall not apply to concerted activities of entrepreneurs (including an act of a trade association which causes its constituent entrepreneurs to undertake concerted activities; hereinafter the same) who produce the said commodity or a trade association consisting of such entrepreneurs (hereinafter referred to as "producers, etc."), which have been obtained authorization under either of the following two subsections: Provided, That the foregoing shall not apply when they employ unfair trade practices or cause any entrepreneur to employ such acts as constitute unfair trade practices:

(i) The price of the said commodity is below the average cost of production, and a considerable part of the entrepreneurs in the trade concerned may eventually be forced to discontinue production;

(ii) It is difficult to overcome such circumstances as stipulated in the preceding paragraph by the rationalization of individual enterprises.

(2) When circumstances provided for in the preceding subsection exist, those producers, etc. who desire to effect concerted activities relating to restrictions on output or sales, or on facilities or equipments (excluding such as will impede the renovation or improvement of facilities) may, in order to overcome such circumstances, obtain from the Fair Trade Commission authorization of the said activities in advance.

(3) When circumstances provided for in subsection (1) above exist and if restriction on output of the commodity in a particular trade is found extremely difficult for technical reasons, those producers, etc. who desire to effect concerted activities involving price-fixing may, in accordance with the Rules of the Fair Trade Commission, obtain from the Fair Trade Commission authorization of the said activities in advance. The same shall apply to a price-fixing agreement entered into concurrently with an agreement provided for in the preceding subsection, when the concerted activities have been effected upon authorization under the preceding subsection, and when such concerted activities alone proved to be entirely inadequate to overcome the

circumstances stipulated in subsection (1) above.

(4) The Fair Trade Commission shall not grant authorization as provided for in the preceding two subsections unless the concerted activities applied fall under the conditions provided for in the preceding two subsections and conform with each of the following paragraphs:

(i) That they do not exceed the necessary extent to overcome the circumstances provided for in subsection (1) above;

(ii) That there is no likelihood of unjustly injuring the interests of the consumers in general, and of related entrepreneurs;

(iii) That they are not unjustly discriminatory;

(iv) That they do not restrict unjustly participation in or withdrawal from such activities.

(5) When the Fair Trade Commission has authorized or dismissed an application for authorization under subsection (2) or (3) above, or has taken action pursuant to the provisions of Section 66(1) [cancellation or modification of authorization] with regard to authorization under subsection (2) or (3) above, it shall, without delay, make public the fact showing the reason for said action.

(6) The producers, etc. engaged in concerted activities after obtaining authorization under subsection (2) or (3) above shall, without delay, file a notification thereof with the Fair Trade Commission, when they have discontinued the said activities.

(7) The Fair Trade Commission shall, where an objection to authorization under subsection (2) or (3) above has been field, conduct an open hearing in accordance with the Rules of the Fair Trade Commission.

(8) The Fair Trade Commission shall, prior to granting such authorization under subsection (2) or (3) above, or to dismissing an application thereof, consult with the competent minister in charge of the business concerned. The same shall apply when the Fair Trade Commission intends to take action provided for in Section 66(1) [revocation or modification of authorization, approval or decision] with respect to such authorization under subsection (2) or (3) above.

Sec.24-4 [Rationalization cartels]

(1) The Provisions of this Act shall not apply to concerted activities of producers, etc. who have obtained authorization under the following subsection, where they are found particularly necessary for effecting an advancement of technology, an improvement in the quality of goods, a reduction in costs, an increase in efficiency or any other rationalization of enterprises.

(2) Producers, etc. desirous of undertaking concerted activities regarding restrictions on technology or kinds of product, utilization of facilities for storage of raw materials or products or for transportation thereof, or utilization or purchase of by-products, waste, or scrap in the case provided for by the preceding subsection may, in accordance with the provisions of the Rules of the Fair Trade Commission, obtain authorization from the Fair Trade Commission in advance.

(3) The Fair Trade Commission shall not grant authorization under the preceding subsection unless concerted activities applied for fall under the conditions provided for in the preceding subsection, and conform with each of the following paragraphs:

(i) That there is no likelihood of unjustly injuring the interests of users;

(ii) That there is no likelihood of unjustly injuring the interests of the consumers in general and of related entrepreneurs (excluding customers);

(iii) That they are not unjustly discriminatory;

(iv) That they do not restrict unjustly the participation in or withdrawal from such activities;

(v) That where restrictions on a line of products are imposed differently on participants in the concerted activities, such differentiation is not designed unjustly to concentrate production of a particular product in the hands of any specific entrepreneurs.

(4) The provisions of the proviso to subsection (1) and of subsections (5) to (8) inclusive of the preceding section shall apply mutatis mutandis to the concerted activities as provided for in subsection (2).

CHAPTER VII DAMAGES

Sec.25 [Absolute liability]

(1) Any entrepreneur who has effected private monopolization or unreasonable restraint of trade or who has employed unfair trade practices shall be liable to indemnify the person injured.

(2) No entrepreneur may be exempted from the liability as prescribed in the preceding subsection by proving non-existence of wilfulness or negligence on his part.

Sec.26 [Restriction on exercise of the right to claim for damages in court, prescription]

(1) The right to claim for damages in the preceding subsection may not be exercised in court until the decision pursuant to the provisions of Section 48(4) [recommendation decision], Section 53-3 [consent decision], or Section 54 [formal decision] has become final and conclusive in case no decision has been made pursuant to the provisions above.

(2) The right under the preceding subsection shall, upon expiration of three years from the date on which the decision in the said subsection became final and conclusive, be extinct by prescription.

CHAPTER VIII FAIR TRADE COMMISSION

Division I Organization and Power

Sec.27 [Duty and position]

(1) The Fair Trade Commission shall be established in order to attain the purpose of this Act.

(2) The Fair Trade Commission shall be administratively attached to the Prime Minister.

Sec.27-2 [Affairs under the jurisdiction of the Fair Trade Commission]

The affairs under the jurisdiction of the Fair Trade Commission shall be as follows:

(i) Matters relating to regulation on private monopolization;

(ii) Matters relating to regulation on unreasonable restraint of trade;

(iii) Matters relating to regulation on unfair trade practices;

(iv) Matters relating to regulation on monopolistic situations;

(v) Doing surveys and research on business activities or actual economic conditions or making coordination of economic laws or orders, relating to regulation on activities which substantially restrain competition in any particular field of trade, regulation on activities which tend to impede fair competition, regulation in order to prevent excessive concentration of economic power or other regulation on unjust restriction of business activities;

(vi) Business which is assigned to the Fair Trade Commission based on a law (including an order based on a law), in addition to those stipulated in any one of the preceding paragraphs.

Sec.28 [Independence]

The chairman and the commissioners of the Fair Trade Commission perform their duties independently.

Sec.29 [Organization, appointment of chairman and commissioners and their status]

(1) The Fair Trade Commission shall be composed of a chairman and four commissioners.

(2) The chairman and the commissioners shall be appointed by the Prime Minister with the consent of both Houses of the Diet from among persons whose age is thirty five or more and who are experts in law or economics.

(3) The appointment or dismissal of the chairman shall be attested to by the Emperor.

(4) The chairman and the commissioners shall be public service officials.

Sec.30 [Term of office for chairman and commissioners]

(1) The term of office for the chairman and the commissioners shall be five years: Provided, That the term of office for the chairman and the commissioners appointed to fill a vacancy shall be the remainder of the term of office of his predecessor.

(2) The chairman and the commissioners may be reappointed.

(3) The chairman and the commissioners shall retire from the office upon reaching the age of seventy.

(4) If the term of office for the chairman or the commissioners expires, or a vacancy occurs at the time when the consent of both Houses of the Diet is unobtainable because the Diet is not in session or the House of Representatives is dissolved, the Prime Minister may appoint the chairman or a commissioner from among such persons having qualifications as provided for in the subsection (2) of the preceding section. In this case the subsequent approval of both Houses shall be obtained at the earliest session of the Diet after the appointment.

Sec.31 [Guarantee of status of chairman and commissioners]

The chairman or a commissioner may not, against his will, be removed from office during his term of office, except in the cases falling under any one of the following paragraphs:

(i) When he has been adjudicated as incompetent, quasi-incompetent, or in bankruptcy;

(ii) When he has been dismissed by way of disciplinary punishment;

(iii) When he has been punished for violation of this Act;

(iv) When he has been sentenced to imprisonment or heavier penalty;

(v) When the Fair Trade Commission has decided that he is incapable of executing his duty on account of his physical or mental breakdown;

(vi) When the subsequent approval of both Houses of the Diet could not be obtained in the case of subsection (4) of the preceding section.

Sec.32 [Dismissal of chairman or commissioners]

In the case of paragraphs (i) or (iii) to (vi) inclusive of the preceding section, the Prime Minister shall dismiss the chairman or the commissioner concerned from his office.

Sec.33 [Chairman]

(1) The chairman shall preside over the affairs of the Fair Trade Commission and shall represent it.

(2) The Fair Trade Commission shall choose in advance a commissioner from among the commissioners who acts on behalf of the chairman in case he cannot execute his duty.

Sec.34 [Quorum and voting]

(1) Meeting of the Fair Trade Commission shall not be declared open and a decision shall not be made without the attendance of the chairman and two or more commissioners.

(2) All decisions of the Fair Trade Commission shall be made by majority votes of the attending commissioners. In case the votes are evenly divided, the chairman shall have the power to decide.

(3) The decision of the Fair Trade Commission under the provisions of Section 31(v) shall, irrespective of the provisions of the preceding subsection, be made with the unanimous concurrence of all commissioners or the chairman except for the commissioner or chairman concerned.

(4) For the purpose of applying the provisions of subsection (1) above, in case the chairman cannot execute his duty, the commissioner chosen to act on behalf of the chairman pursuant to subsection (2) of the preceding section shall be deemed to be the chairman.

Sec.35 [Staff office personnel]

(1) The general secretariat shall be attached to the Fair Trade Commission for the

discharge of its affairs.

(2) The secretary general shall be maintained in the general secretariat.

(3) The secretary general shall preside over the affairs of general secretariat (excluding the affairs which the Fair Trade Commission decides to entrust hearing examiners to conduct in accordance with the provisions of Section 51-2).

(4) Secretariat and bureaus shall be maintained in the general secretariat.

(5) The provisions of Section 7(2), (5), (6) and Section 19 of the National Government Organization Law shall apply mutatis mutandis to the maintenance of secretariat and bureaus in the preceding subsection, the scope of the affairs under the jurisdiction, and internal organization.

(6) Hearing examiners, not exceeding five in number shall be maintained in the general secretariat, whose duty shall be to conduct a part of the hearing procedures (excluding the rendering of a decision).

(7) Hearing examiners shall be selected by the Fair Trade Commission from among the personnel of the general secretariat who have been found to have the necessary knowledge and experience in law and economics to conduct the hearing procedures and to be capable of making a fair judgment.

(8) A public prosecutor, private attorney practicing at the time of the appointment, or a person qualified to be an attorney at law shall be among the personnel of the general secretariat.

(9) Duties to be placed upon the personnel who is a public prosecutor under the preceding subsection shall be limited to matters relating to cases in violation of the provisions of this Act.

Sec.35-2 [Local offices]

(1) Local offices shall be maintained at necessary places as local organization of the general secretariat of the Fair Trade Commission.

(2) The name, location and territorial jurisdiction of each local office under the preceding subsection shall be provided for by a Cabinet Ordinance.

(3) Branches may be maintained at necessary places under local offices in order to conduct a part of the affairs of local offices.

(4) The name, location and territorial jurisdiction of each branch under the preceding subsection shall be provided for by the Ordinance of Prime Minister's Office.

Sec.35-3 [Administration of personnel]

With regard to the appointment, dismissal, disciplinary measures, and other matters relating to the administration of personnel of the general secretariat, the provisions of the National Public Service Personnel Act (Act No.120 of 1947) shall apply.

Sec.36 [Salaries of chairman and commissioners]

(1) The salaries of the chairman and the commissioner shall be provided for separately.

(2) The salaries of the chairman and the commissioner shall not be reduced in amount against their will while they are in office.

Sec.37 [Prohibition of certain activities of chairman, commissioners and personnel]

The chairman, each commissioner and such personnel of the Fair Trade Commission as may be stipulated by a Cabinet Ordinance shall not engage in any one of the following activities while he is in office:

(i) Becoming a member of the Diet or of the legislative assembly of a local public authority, or actively engage in political activities;

(ii) Holding any other remunerative position except as permitted by the Prime Minister; or

(iii) Engage in commerce or any other business for pecuniary gain.

Sec.38 [Prohibition of expression of opinion]

The chairman, each commissioner and other personnel of the Fair Trade Commission shall not express their views outside the Fair Trade Commission on the existence or non-existence of facts or application of law with regard to a case of violation: Provided, That the foregoing shall not apply to cases provided for in this Act or where the presentation of the results of his study concerning this Act is made.

Sec.39 [Duty to preserve trade secrets]

The chairman, each commissioner and other personnel of the Fair Trade Commission, or any person who once held such position, shall not divulge or make surreptitious use of trade secrets of entrepreneurs which came to their knowledge in the course of their duties.

Sec.40 [Compulsory powers of inquiry]

The Fair Trade Commission may, if necessary for the performance of its functions, order government agencies, legal entities established by a special law or an order, entrepreneurs, or organizations of entrepreneurs, or their personnel to appear before the Commission, or may require them to submit necessary reports, information or data.

Sec.41 [Entrustment of research and surveys]

The Fair Trade Commission may, if necessary, for the performance of its functions, entrust government agencies, legal entities established by a special law or an order, schools, entrepreneurs, organizations of entrepreneurs, or persons of learning and experience to carry out necessary research and surveys.

Sec.42 [Public hearings]

The Fair Trade Commission may, if necessary for the performance of its duties, hold public hearings to obtain views of the public.

Sec.43 [Publication of appropriate matters]

The Fair Trade Commission may, in order to ensure proper enforcement of this Act,

make public any appropriate matters with the exception of trade secrets of entrepreneurs.

Sec.44 [Reports to the Diet, submission of opinions]

(1) The Fair Trade Commission shall submit to the Diet, through the Prime Minister, an annual report on the enforcement of this Act. In this case, the report shall contain an outline of the report ordered to be submitted under the provisions of Section 18-2(1) [reporting requirement on parallel price increases].

(2) The Fair Trade Commission may submit to the Diet, through the Prime Minister, its views on matters necessary to attain the purpose of this Act.

Division II Procedures

Sec.45 [Report and detection of violation]

(1) Any person may, when he considers that a fact in violation of this Act exists, report the said fact to the Fair Trade Commission and ask for the appropriate measures to be taken.

(2) The Fair Trade Commission, upon receipt of such report as provided for in the preceding subsection, shall make necessary investigation with respect to the case.

(3) Where any report submitted under the provisions of subsection (1) above specifies in writing any fact or facts in accordance with the Rules of the Fair Trade Commission, and when the Commission decides to take, or not to take, appropriate measures with respect to the case referred to in the report, the Fair Trade Commission shall promptly notify that effect to the person who made such report.

(4) The Fair Trade Commission may, when it considers that a violation of this Act or a monopolistic situation exists, take appropriate measures on its own authority.

Sec.45-2 [Procedures for measures against a monopolistic situation]

(1) The Fair Trade Commission shall, if it considers that there exists a fact which falls under the purview of a monopolistic situation, and if it decides to take a measure set forth in subsection (3) of the preceding section, make a notice of such action to the competent minister having jurisdiction over business in which the entrepreneur concerned is engaged.

(2) In case a notice under the provision of the preceding subsection has been made, the minister may present to the Commission his view regarding the existence or the absence of such a monopolistic situation and his view regarding other alternative measures which he feels would be sufficient to restore competition as provided for in the proviso to Section 8-4(1) [measures against a monopolistic situation].

Sec.46 [Compulsory measures for investigation]

(1) The Fair Trade Commission may, in order to conduct the necessary investigation with regard to a case of violation, take any one of the following measures:

(i) Ordering persons concerned with a case, or witnesses to appear for interrogating, hearing their views or collecting reports from them;

(ii) Ordering experts to appear to have them give expert testimony;

(iii) Ordering persons holding accounting books, documents and other matters to submit the same, or to retain such submitted matters; or

(iv) Entering any place of business of the persons concerned with a case, or other necessary places and inspecting conditions of business operation and property, accounting books, documents and other matters.

(2) The Fair Trade Commission may, when it finds it proper, designate, in accordance with the provisions of a Cabinet Ordinance, investigators from among the personnel of the Fair Trade Commission and cause them to take the measures as provided for in the preceding subsection.

(3) Where an inspection is to be conducted by the personnel in accordance with the provisions of the preceding subsection, they shall be required to carry their identification cards and to show it to the persons concerned.

(4) The authority to take action pursuant to the provision of subsection (1) above shall not be construed as one granted for criminal investigation.

Sec.47 [Investigation record]

The Fair Trade Commission shall, when it has conducted the necessary investigation of a case of violation, keep an investigation record of the main points thereof, and when it has taken any measures as provided for in the preceding section, it shall set out the result thereof.

Sec.48 [Recommendation to the violator to take elimination measures, Recommendation decision]

(1) The Fair Trade Commission may, when it finds that there exists any act in violation of the provisions of Section 3 [prohibition of private monopolization or unreasonable restraint of trade], Section 6(1) [prohibition of particular international agreements or contracts], or (2) [filing requirement of the same], Section 8 [prohibited acts of a trade association], Section 9(1) or (2) [prohibition of a holding company], Section 9-2(1) [restriction on total amount of stockholding by a giant non-financial company], section 10 [prohibition of particular stockholding by a company], Section 11 [restriction on stockholding rate by a financial company], Section 13 [prohibition of particular interlocking directorates], Section 14 [prohibition of particular stockholding by a person other than a company], Section 15 (1) [prohibition of particular mergers] (including such cases where the said provisions are applied mutatis mutandis by Section 16 [prohibition of particular acquisitions of business, etc.]), Section 17 [prohibition of evasion] or Section 19 [prohibition of unfair trade practices], recommend the persons who have committed such violation (including the officers and managers of a trade association and its constituent entrepreneurs when the violating act relates to the provisions of Section 8) to take appropriate measures.

(2) The Fair Trade Commission may, if it finds that any act in violation of the provisions of Section 3 [prohibition of private monopolization or unreasonable restraint of trade], Section 8(1) [prohibited acts of a trade association] (i), (iv) or (v) or Section 19 [prohibition of unfair trade practices], has already ceased to exist, and if it finds it particularly necessary, recommend to the person who committed such violation (including the officers and managers of such trade association and its constituent entrepreneurs when the violating act relates the provisions of Section 8(1)(i), (iv) or (v)) to take appropriate measures.

(3) Any person who has received a recommendation under the provisions of the preceding subsection shall notify without delay to the Fair Trade Commission whether or not he accepts the said recommendation.

(4) The Fair Trade Commission may, when the person receiving the recommendation under the provisions of the preceding two subsections has accepted it, render a decision on the line of the said recommendation without resorting to the hearing procedures.

Sec.48-2 [Procedures for surcharges]

(1) The Fair Trade Commission shall, when it finds there exists a fact as provided for in subsection (1) [surcharges] of Section 7-2 (including cases where this provision is applicable mutatis mutandis under Section 8-3 [surcharges against constituent entrepreneurs]; hereinafter the same in this section), order the entrepreneur or the constituent entrepreneurs of the trade association (or other entrepreneur in case a constituent entrepreneur is acting for the benefit of the other entrepreneur; hereinafter the same in this section) to pay to the Treasury a surcharge as prescribed in Section 7-2(1) or (2): Provided, That in case hearing procedures have been initiated with respect to such violating act, such order shall not be issued by such time as such procedures have been completed.

(2) An order prescribed in the preceding subsection (hereinafter referred to as "payment order") shall be made by serving to such entrepreneur a certified copy of such payment order which states the amount of the surcharge to be paid, the basis of calculation of such amount, the violating act responsible for such surcharge and deadline for payment.

(3) The deadline for payment of such surcharge as prescribed in the preceding subsection shall fall on a date two months after the date on which such payment order is forwarded.

(4) The Fair Trade Commission shall, when it contemplates issuing a payment order, give in advance, the entrepreneur or the constituent entrepreneur of the trade association concerned, an opportunity to present his views and to submit evidence in

support thereof.

(5) If any person is dissatisfied with the payment order, he may, in accordance with the Rules of the Fair Trade Commission and within thirty days from the date on which the certified copy of such order was forwarded, request the Commission to initiate hearing procedures on the said case.

(6) Expect in cases where such a decision was rendered pursuant to the provisions of subsection (4) of the preceding section, Section 53-3 [consent decision] or Section 54 [formal decision] with respect to the said violating act, a payment order shall be deemed final and conclusive for the purpose of applying the provisions of Section 26 [restriction on exercise of the right to claim for damages in court, prescription], after the lapse of the period prescribed in the preceding subsection.

Sec.49 [Initiation of hearing procedures]

(1) The Fair Trade Commission may, in the case of Section 48(1) or (2) [recommendation to the violator to take elimination measures] or in the case where there exists a monopolistic situation (excluding the case provided for in the proviso to Section 8-4(1) [measures against a monopolistic situation]. The same shall apply in Section 54(1) [formal decision], and if it finds that it would be in the public interest to initiate hearing procedures on the case, initiate hearing procedures on the said case.

(2) When a request as prescribed in subsection (5) of the preceding section is filed, the Fair Trade Commission shall, except in cases where it rejects the said request as unlawful by a decision, without delay initiate the hearing procedures on the case which is the subject of such request.

(3) In case hearing procedures have been initiated pursuant to the provisions of the preceding subsection, the payment order issued relating to such case shall lose effect.

(4) The Fair Trade Commission shall, when it contemplates initiating hearing procedures on a case relating to Section 8-4(1) [measures against a monopolistic situation], consult with the competent minister having jurisdiction over the business in which such entrepreneur is engaged.

Sec.50 [Complaints, initiation of hearing procedures]

(1) The complaint shall be made in writing, in which the outline of the case shall be stated, and the chairman and the commissioners participating in the voting of the decision to issue the complaint shall sign it and affix their seal thereto.

(2) The hearing procedures shall be initiated by serving a certified copy of the complaint upon a person to be ordered to take such measures (referred to as "elimination, etc. measures" in Section 52(1) [respondent's defense] as provided for in Section 7(1) [elimination measures] or (2) [elimination measures against already ceased violations] (including the cases applicable mutatis mutandis under the Section 8-2(2) and Section 20(2)), Section 8-2(1) or (3) [elimination measures], Section 8-4(1) [measures against a monopolistic situation], Section 17-2 [elimination measures] or Section 20(1) [elimination measures] or such person requesting the initiation of the hearing procedures in accordance with the provisions of Section 48-2(5) [request for initiation of hearing procedures on surcharges] (hereinafter referred to as "respondent").

(3) The respondent shall be ordered to appear on the date of the hearing proceedings.

(4) The date of the hearing proceeding shall be fixed on a day later than thirty days from the date of serving the certified copy of the complaint: Provided, That the foregoing shall not apply when the consent of the respondent is obtained.

Sec.51 [Answers]

A respondent shall, upon receipt of the certified copy of the complaint, submit an answer without delay to the Fair Trade Commission.

Sec.51-2 [Entrusted proceedings by hearing examiners]

The Fair Trade Commission may, after issuing a complaint, entrust hearing examiners to conduct a part of the hearing procedures (excluding the decision) in addition to taking the measures under each paragraph of Section 46(1) [compulsory measures for investigation], in accordance with the Rules of the Fair Trade

Commission: Provided, That this shall not apply to such person or persons who have performed the duty as the investigator of the said case or those who have intervened in the investigation of the said case.

Sec.51-3 [Powers of investigators at hearing proceedings]

An investigator designated in accordance with the provisions of Section 46(2) [designation of investigators], may attend hearing proceedings, request evidence to be adopted, and perform other necessary acts.

Sec.52 [Respondent's defense]

(1) A respondent or his representative may, at hearing proceedings, state the reason why an order of the Fair Trade Commission to take elimination, etc. measures or to pay a surcharge under the provisions of Section 7-2(1) [surcharges] (including such case when the said provisions are applied mutatis mutandis by Section 8-3 [surcharges against constituent entrepreneurs]) in regard to the said case should not be made, submit supporting evidence therefor, request the Fair Trade Commission to interrogate necessary witnesses, to order expert witnesses to testify, to order holders of accounting books, documents and other matters to submit them, or to enter the necessary places and inspect the conditions of business and property, accounting books and other matters, or may interrogate witnesses or expert witnesses who are required to attend the hearing proceedings by order of the Fair Trade Commission.

(2) A respondent may be represented by an attorney at law or any other appropriate persons approved by the Fair Trade Commission.

Sec.52-2 [Disclosure of reasons for non-adoption of evidence]

In case the Fair Trade Commission has not adopted any evidence introduced by the investigator, the respondent or his representative, the Commission shall state the reason for not having adopted such evidence.

Sec.52-3 [Non-appearance of respondents]

The Fair Trade Commission may conduct the hearing proceedings even if the

respondent or his representative fails to appear on the date of the said hearing proceedings without a justifiable cause.

Sec.53 [Hearing proceedings, stenographic record]

(1) All hearing proceedings shall be made public: Provided, That when it is found necessary to protect the trade secrets of an entrepreneur, or necessary to the public interest, a hearing proceeding shall not be made public.

(2) A stenographer shall attend all hearing proceedings to record statements made therein.

Sec.53-2 [Qualification for witness, right to refuse testimony, oath, etc.]

(1) The provisions of Sections 143 to 147 inclusive [principles on qualification for witness, relationship between public service secret and witness qualification, responsibility of oneself or close relatives and the right to refuse testimony], Section 149 [qualification for witness, the right to refuse testimony], Section 154 to 156 inclusive [oath of witness, testimony of estimated matters], Section 165 [expert witnesses], and Section 166 [oath of expert witness] of the Code of Criminal Procedures shall apply mutatis mutandis to the procedures by which the Fair Trade Commission or hearing examiners, in the course of hearing proceedings, interrogate a witness, or order an expert to give his testimony.

(2) In such cases as provided for in the preceding subsection, the terms "court", "question", and "defendant" shall read as "the Fair Trade Commission or hearing examiners", "interrogate" and "respondent" respectively.

Sec.53-2-2 [Opportunity to state the case directly to the Commission]

In case the Fair Trade Commission has entrusted hearing examiners to conduct a part of the hearing procedures in accordance with the provisions of Section 51-2 [entrusted proceedings by hearing examiners], if the respondent or his representative so requests, the Commission shall give the respondent or his representative an opportunity to state their views directly to the Commission: Provided, That this shall not apply to a case in which the hearing procedures have been initiated pursuant to the

provision of Section 49(2) [initiation of hearing procedures on surcharges] and a decision has been rendered with respect to the violating act of such case pursuant to the provision of Section 48(4) [recommendation decision], the following section [consent decision] or Section 54 [formal decision].

Sec.53-3 [Consent decision]

The Fair Trade Commission may, after determined to initiate the hearing procedures, when the respondent, admitting the findings of fact and the application of law stated in the complaint, submits to the Fair Trade Commission a written statement setting forth that he will accept the decision without resorting to subsequent hearing proceedings, and files a plan setting forth concrete measures which he proposes voluntarily to take in order to eliminate such violation, or to ensure the elimination of such violation, or to restore competition with respect to the goods or services involved in the monopolistic situation, if the Commission finds it appropriate, render a decision on the line of the concrete measures as stated in such plan without subsequent hearing proceedings.

Sec.54 [Formal decision]

(1) The Fair Trade Commission shall, when it finds after hearing proceedings that violation of the provisions of Section 3 [prohibition of private monopolization or unreasonable restraint of trade], Section 6(1) [prohibition of particular international agreements or contracts] or (2) [filing requirement of the same], Section 8 [prohibited acts of a trade association], Section 9(1) or (2) [prohibition of holding company], Section 9-2(1) [restriction on total amount of stockholding by a non-financial giant company], Section 10 [prohibition of particular stockholding by a company], Section 11(1) [restriction on stockholding rate by a financial company], Section 13 [prohibition of particular interlocking directorates], Section 14 [prohibition of particular stockholding by a person other than a company], Section 15(1) [prohibition of particular mergers] (including such cases where the said provisions are applied mutatis mutandis by Section 16 [prohibition of particular acquisition of business, etc.]), Section 17 [prohibition of evasion] or Section 19 [prohibition of unfair trade practices] exists or that a monopolistic situation exists, order the respondent by a decision to take such measures as provided for in Section 7(1) [elimination measures], Section 8-2(1) or (3) [elimination measures], Section 17-2 [elimination measures], Section 20(1) [elimination

measures] or Section 8-4(1) [measures against a monopolistic situation].

(2) The Fair Trade Commission shall, when it finds after hearing proceedings that such act in violation of the provisions of Section 3 [prohibition of private monopolization or unreasonable restraint of trade], Section 8(1) [prohibited acts of a trade association] (i), (iv) or (v) or Section 19 [prohibition of unfair trade practices] no longer exists and if it finds it particularly necessary, order, by a decision, the respondent to take the measures provided for in Section 7(2) [measures against already ceased violations] (including cases to which the said subsection is applicable mutatis mutandis in Section 8-2(2) and Section 20(2)).

(3) The Fair Trade Commission shall, when it finds after hearing proceedings that such acts or a monopolistic situation as provided for in subsection (1) did not exist at the time when it issued the complaint, that such acts as provided for in the said subsection or a monopolistic situation existed by the time of the issuance of the complaint, but the said acts or a monopolistic situation have already ceased to exist (excluding the decision under the preceding subsection), or that a monopolistic situation exists and falls under the proviso to Section 8-4(1), make clear the said fact by a decision.

Sec.54-2 [Surcharge payment order]

The Fair Trade Commission shall, when it finds after hearing proceedings a fact as provided for in Section 7-2(1) [surcharges] (including cases where this provision is applicable mutatis mutandis by Section 8-3 [surcharges against constituent entrepreneurs]), order, by a decision, the respondent to pay to the Treasury a surcharge levied on such violation.

(2) The provisions of Section 48-2(3) [deadline for payment of surcharges] shall apply mutatis mutandis to a decision provided for in the preceding subsection.

Sec.54-3 [Findings based on evidence]

In rendering a decision as provided for in the preceding two sections, the Fair Trade Commission shall, except in the case of facts not challenged by the respondent or known publicly, find the facts in question based on the evidences examined at the

hearing procedures.

Sec.55 [Meetings for decision]

(1) Decisions shall be made by meeting of the chairman and the commissioners.

(2) The provisions of Section 34(1), (2) and (4) [quorum and voting] shall apply mutatis mutandis to such meetings as provided for in the preceding subsection.

(3) For a decision ordering the respondent or respondents to take the measures provided for in Section 8-4(1) [measures against a monopolistic situation], the decision shall be supported by three or more commissioners or chairman, notwithstanding the provision of section 34(2) which are applied mutatis mutandis by the preceding subsection.

Sec.56 [Closed meetings]

Meetings of the Fair Trade Commission shall not be made public.

Sec.57 [Form of decision]

(1) Decisions shall be rendered in writing; and the written decisions shall show the fact found by and the application of law thereto made by the Fair Trade Commission and in the case of the decision under Section 54-2(1) [surcharge payment order], the basis of calculating the surcharge; and the chairman and the commissioners participating in the voting shall sign it and affix their seal thereto.

(2) A dissenting opinion may be stated in a written decision.

Sec.58 [Effective date of decision]

(1) A decision shall take effect from the time when the certified copy of the written decision has been served to the respondent.

(2) Any decision ordering the respondent or respondents to take the measures provided for in Section 8-4(2) [measures against a monopolistic situation] shall not be

enforced unless and until such decision becomes final and conclusive.

Sec.59 [Interventions of the third parties interested]

The Fair Trade Commission may, if it finds it necessary, cause, on its own authority, a third person interested in the result of the decision, to be a party to the hearing procedures: Provided, That it shall in advance interrogate the respondent and the said third party.

Sec.60 [Interventions of a government agency or public organization]

Any government agency or public organization interested in a case may, if it finds it necessary in the public interest, intervene in the hearing procedures as a party with the approval of the Fair Trade Commission.

Sec.61 [Opinions of a government agency or public organization]

Any government agency or public organization interested in a case may, in order to protect the public interest, express its views to the Fair Trade Commission.

Sec.62 [Stay of execution of FTC's order by deposit]

(1) When the Fair Trade Commission has ordered by a decision to cease and desist from acts constituting violations or any other measures in accordance with the provisions of Section 54(1) or (2) [formal decision], the respondent may stay the execution of the said order by depositing such bond or securities as may be fixed by the court until the said decision becomes final and conclusive.

(2) The court ruling under the provisions of the preceding subsection shall be made in accordance with the Act or Procedures in Non-Contentious Matters.

Sec.63 [Forfeitures of deposit]

(1) In a case where a respondent has made the deposit in accordance with the provisions of subsection (1) of the preceding section and the decision in question has become final and conclusive, the court may, upon application of the Fair Trade

Commission, forfeit the whole or a part of such bond or securities deposited.

(2) The provisions of subsection (2) of the preceding section shall apply mutatis mutandis to the court ruling under the provisions of the preceding subsection.

Sec.64 [Compulsory measures for investigation after decision]

The Fair Trade Commission may, if it considers particularly necessary after a decision rendered in accordance with the provisions of Section 54(1) or (2) [formal decision], take measures or may cause its personnel to take measures in accordance with the provisions of Section 46 [compulsory measures for investigation].

Sec 64-2 [A reminder for payment of surcharge and measures against delinquency]

(1) If any person fails to pay a surcharge by the designated deadline, the Fair Trade Commission shall press such person to pay the surcharge by serving a written reminder specifying a deadline therefor.

(2) In case a reminder is served pursuant to the provisions of the preceding subsection, the Fair Trade Commission may collect an arrearage charge computed at a rate of 14.5 percent per annum of the amount of such surcharge as prescribed in the said subsection for the number of days intervening between the date immediately following the deadline and the date of payment: Provided, That this shall not apply to cases where the arrearage charge involved is less than one thousand yen.

(3) In case the amount of an arrearage charge, computed in accordance with the provisions of the preceding subsection, contains a fraction of less than one hundred yen, such fraction shall be disregarded.

(4) In case any person on whom a reminder has been served under the provisions of subsection (1) fails to pay a surcharge overdue, the Fair Trade Commission may collect such surcharge based on the example of the national tax delinquency procedures.

(5) The claim on a defaulted surcharge as prescribed in the preceding subsection shall have a lien next to those of the national and local taxes, and the prescription on such claim shall be the same as that of the national tax.

Sec.65 [Dismissal of application for authorization, etc.]

(1) The Fair Trade Commission shall, when an application for authorization under the provisions of Section 9-2(1)(vi) [application for authorization of holding of stock of joint ventures with a foreign person, etc. by a giant non-financial company], Section 11(1) or (2) [application for authorization of stockholding by a financial company], Section 24-3(2) or (3) [application for authorization of depression cartels], or 24-4(2) [application for authorization of rationalization cartels] or an application for approval under the provision of Section 9-2(1)(ix) [application for approval of stockholding by imperative reasons by a giant non-financial company] has been filed and if it finds the said application to be groundless, dismiss it by a decision.

(2) The provisions of Section 45(2) [investigation in case of report of a violation] shall apply mutatis mutandis to the application for authorization or approval in the preceding subsection.

Sec.66 [Revocation or modification of authorization, approval or decision]

(1) The Fair Trade Commission may, when it finds, with respect to the authorization or approval as prescribed in subsection (1) of the preceding section, that the facts required for the said authorization or approval have ceased to exist or have changed, revoke or modify such authorization or approval after hearing procedures.

(2) The Fair Trade Commission may, when it finds that further maintenance of a decision is unreasonable and contrary to the public interest due to the changes in economic conditions and to other reasons, revoke or modify it by a decision: Provided, That the foregoing shall not apply if the interest of the respondent may be injured thereby.

Sec.67 [Urgent injunction]

(1) The court may, upon application of the Fair Trade Commission, when it finds the matter to be one of urgent necessity, order the person doing an act suspected of violation of the provisions of Section 3 [prohibition of private monopolization or unreasonable restraint of trade], Section 6(1) [prohibition of particular international

agreements or contracts], Section 8(1) [prohibited acts of a trade association], Section 9(1) or (2) [prohibition of holding company], Section9-2(1) [restriction on total amount of stockholding by a non-financial giant company], Section 10 (1) [prohibition of particular stockholding by a company], Section 11(1) [restriction on stockholding rate by a financial company], Section 13(1) or (2) [prohibition of particular interlocking directorates], Section 14(1) [prohibition of particular stockholding by a person other than a company], Section 15(1) [prohibition of particular mergers] (including such cases where the said provisions are applied mutatis mutandis by Section 16 [prohibition of particular acquisitions of business, etc.]), Section 17 [prohibition of evasion] or Section 19 [prohibition of unfair trade practices], temporarily to cease and desist from the said act, the exercise of voting rights or the execution of duties as an officer in a company, or may rescind or modify such order.

(2) The court may, upon application of the Fair Trade Commission, when it finds the matter to be one of urgent necessity, order the person who has obtained authorization under the provisions of Section 24-3(2) or (3) [authorization of depression cartels] or 24-4(2) [authorization of rationalization cartels], when there is a reason to suspect, in view of the provisions of Section 66(1) [revocation or modification of authorization], that conditions necessitating revocation or modification of such authorization under Section 24-3(2) or (3), or 24-4(2) have arisen, temporarily to suspend the said authorized activity, or may revoke or modify such order.

(3) The provisions of Section 62(2) [mutatis mutandis application of the Act of Procedures on Non-contentious Matters] shall apply mutatis mutandis to the court ruling under the provisions of the preceding two subsections.

Sec.68 [Stay of urgent injunction]

(1) The execution of an urgent injunction under the provisions of the preceding subsection (1) or (2), may be stayed by depositing such bond or securities as the court may fix.

(2) The provisions of Section 63 [forfeitures of deposit] shall apply mutatis mutandis to forfeiture of deposit under the provisions of the preceding subsection.

Sec.69 [Access to records]

Any interested person may request to the Fair Trade Commission, after the issuance of a complaint, to peruse or copy the record of a case, or may ask the Fair Trade Commission for a certified copy of a surcharge payment order or a decision or an abridged copy thereof.

Sec.69-2 [Service]

With regard to the service of documents, the provisions of Section 162 [service agent], Section 169 [place of service, service by meeting], Section 171 [supplementary service, service by leaving] and Section 177 [certificate for service] of the Code of Civil Procedures shall apply mutatis mutandis. In this case, the terms "marshal" and "court clerk" shall read as "personnel of the Fair Trade Commission" and the term "court" shall read as "the Fair Trade Commission".

Sec.70 [Matters to be provided for by a Cabinet Ordinance]

Necessary matters with respect to procedures for investigation and hearing proceedings of the Fair Trade Commission, any other matters relating to the disposal of cases as well as those with respect to deposit under Section 62(1) [stay of execution of the Fair Trade Commission's order by deposit] and Section 68(1) [stay of urgent injunction] shall be provided for by a Cabinet Ordinance except for such matters as are provided for in this Act.

Sec.70-2 [Special provisions for appeals]

The decision or any other measures (including the measures effected by an investigator under the provisions of Section 46(2) [designation of and measures by investigators] or by hearing examiners under Section 51-2 [entrusted proceedings by hearing examiners]) that has been rendered by the Fair Trade Commission under the provisions of this Division shall not be appealed under the Administrative Complaint Review Act (Act No.160 of 1962).

Division III Miscellaneous Provisions

Sec.71 [Procedures for designation of unfair trade practices in a specific field of business]

The Fair Trade Commission shall, when it designates specific trade practices in a specific field of business in accordance with the provisions of Section 2(9) [designation of unfair trade practices], first hear the views of entrepreneurs operating in the same line of business as that of the entrepreneurs who employ the said specific trade practices, and hold a public hearing to obtain the views of the public and thereupon shall make the designation after due consideration of the views presented.

Sec.72 [Designation of unfair trade practices by means of a notification]

Designation under the provisions of Section 2(9) [designation of unfair trade practices] shall be made by a notification.

Sec.72-2 [Public hearing on a monopolistic situation]

In case the Fair Trade Commission tries to initiate the hearing procedures on a case as prescribed in Section 8-4(1) [measures against a monopolistic situation], the Commission shall hold a public hearing to obtain views of the public.

Sec.73 [Accusation, report on non-prosecution]

(1) The Fair Trade Commission shall, when it considers that a crime violating the provisions of this Act exists, file an accusation with the Public Prosecutor General.

(2) The Public Prosecutor General shall, when he has taken measures not to prosecute in a case which is the subject of an accusation under the provisions of the preceding subsection, without delay, submit to the Prime Minister through the Minister of Justice a written report stating the said fact and reasons therefor.

Sec.74 [Public Prosecutor General's request for the Fair Trade Commission's investigation, etc.]

The Public Prosecutor General may, when he considers that a crime violating the provisions of this Act exists, notify the Fair Trade Commission of the fact, and request

it to investigate and report thereon.

Sec.75 [Compensation for witnesses or expert witness]

Witnesses or expert witness who have been ordered to appear or to give expert testimony in a hearing proceeding in accordance with the provisions of Section 46(1)(i) [the Fair Trade Commission's order to witnesses to appear, etc.] or (ii) [the Fair Trade Commission's order to expert witness to appear, etc.], or (2) [investigator's order to the same effect] or Section 51-2 [hearing examiners' order to the same effect], may claim a traveling allowance and fees as provided for by a Cabinet Ordinance.

Sec.76 [Rule-making powers of the Fair Trade Commission]

The Fair Trade Commission may establish rules with respect to its internal disciplines, procedures for disposing cases and any necessary procedures relating to filing a report, applications for authorization or approval and other matters.

CHAPTER IX SUITS

Sec.77 [filing of a suit to quash a decision]

(1) A suit to quash a decision of the Fair Trade Commission shall be filed within thirty days (three months in case of the decision under the provisions of Section 8-4(1) [measures against a monopolistic situation]) from the date on which the decision became effective.

(2) The time period stated in the preceding subsection shall be peremptory.

Sec.78 [Transmission of records]

The court shall, upon receipt of a suit, request the Fair Trade Commission without delay, to transmit the records of the case concerned (including interrogation records of persons concerned in the case, witnesses or expert witness, stenographic records, and any other matters that may be used as evidences in court).

Sec.79

Deleted. (Act No.140 of 1962)

Sec.80 [Binding authority of the Fair Trade Commission's findings]

(1) Findings of fact made by the Fair Trade Commission shall, if established by substantial evidence, be binding upon the court in regard to the suit provided for in Section 77(1) [filing of a suit to quash a decision].

(2) Whether such substantial evidence as provided for in the preceding subsection exists or not shall be determined by the court.

Sec.81 [Offering of new evidence, reference back of the case to the Fair Trade Commission]

(1) A party may plead to the court for offer to introduce new evidence relevant to the case: Provided, That any such offer to introduce new evidence relating to the facts found by the Fair Trade Commission shall have the reason which come under any one of the following paragraphs:

(i) Where the Fair Trade Commission failed to adopt the evidence without good cause; or

(ii) Where it was impossible to adduce evidence at hearing proceedings of the Fair Trade Commission, and there was no gross negligence on the part of the party in failing to adduce such evidence.

(2) In the cases prescribed in proviso to the preceding subsection, the onus shall be on the party concerned to show either of the reasons provided for in the preceding subsection.

(3) When the court finds there is a reason for offer to introduce new evidence under proviso to subsection (1) and it is necessary to examine such evidence, it shall refer the case back to the Fair Trade Commission and order it to take appropriate measures after examining such evidence.

Sec.82 [Quashing decisions]

The court may quash a decision of the Fair Trade Commission if the decision falls under any one of the following paragraphs:

(i) If the facts on which the decision is based are not established by substantial evidence, or

(ii) If the decision is violating the Constitution, or other laws or orders.

Sec.83 [Reference back of a decision]

The court may, when it finds it necessary that further hearing proceedings shall be conducted in a case where it shall quash a decision of the Fair Trade Commission, refer the case back to the Fair Trade Commission giving the reasons therefor.

Sec.84 [Request for the Fair Trade Commission's opinion on amount of damages]

(1) When a suit for indemnification of damages under the provisions of Section 25 [absolute liability] has been filed, the court shall, without delay, request the opinion of the Fair Trade Commission with respect to the amount of damages caused by such violations as provided for in the said section.

(2) If a counter claim for indemnification of damages under the provisions of Section 25 is made in court proceedings for the purpose of offsetting the other claim, the provisions of the preceding subsection shall apply mutatis mutandis.

Sec.85 [Original jurisdiction]

Original jurisdiction over any suit coming under any one of the following paragraphs shall lie in the Tokyo High Court:

(i) A suit concerning a decision of the Fair Trade Commission;

(ii) A suit concerning indemnification of damages under the provisions of Section 25 (absolute liability); or

(iii) A suit concerning offenses as provided for in Sections 89 to 91 inclusive.

Sec.86 [Exclusive jurisdiction of the Tokyo High Court]

Any case stipulated in Section 62(1) [stay of execution of the Fair Trade Commission's decision by deposit], Section 63(1) [forfeitures of deposit] (including cases where the said provisions are applied mutatis mutandis by Section 68(2) [stay of urgent injunction]), Section 67(1) and (2) [urgent injunction], Section 97 [administrative fines for contraventions of decisions] and Section 98 [administrative fines for disobeying urgent injunction] shall be under the exclusive jurisdiction of the Tokyo High Court.

Sec.87 [Special panel in the Tokyo High Court]

(1) A panel of judges invested with the jurisdiction to hear exclusively the suit provided for in Section 85 [original jurisdiction] and such cases as stipulated in the preceding section shall be established within the Tokyo High Court.

(2) The number of judges in the panel under the preceding subsection shall be five.

Sec.88 [Suit for the cancellation of authorization of depression cartel or rationalization cartel]

A suit for the cancellation of authorization under the provisions of Section 24-3(2) or (3) [authorization of depression cartels], or Section 24-4(2) [authorization of rationalization cartels] may not be filed unless and until a ruling on the objection to the authorization has been rendered.

Sec.88-2 [Special provisions for suits relating to FTC decisions]

With respect to a suit relating to a decision of the Fair Trade Commission, the provisions, of Section 6 [Minister of Justice's guidance, etc. to administrative agencies on suits] of the Act concerning the Authority of the Minister of Justice over the Suits in which Interests of State Are Involved (Act No.194 of 1947) shall not apply.

CHAPTER IX-II MISCELLANEOUS PROVISIONS

Sec.88-3 [Interim measures]

In case any Cabinet Ordinance or Rules of the Fair Trade Commission is instituted, amended or repealed in accordance with the provisions of this Act, necessary interim measures (including those relating to penal provisions) may be provided for by virtue of such Cabinet Ordinance or Rules of the Fair Trade Commission to the extent deemed reasonably necessary as a consequence of such institution, amendment or repeal.

CHAPTER X PENAL PROVISIONS

Sec.89 [Penalties against private monopolization or unreasonable restraint of trade, or substantial restraint of competition by a trade association]

(1) Any person committing one of the following offenses shall be punished by penal servitude for not more than three years or by a fine of not more than five million yen:

(i) Any person who, in violation of the provisions of Section 3 [prohibition of private monopolization or unreasonable restraint of trade], effected private monopolization or unreasonable restraint of trade; or

(ii) Any person who, in violation of the provisions of Section 8(1) [prohibited acts of a trade association] (i), effected substantial restraint of competition in any particular field of trade.

(2) An attempt to commit an offense falling under the preceding subsection shall be punished.

Sec.90 [Penalties against prohibited international agreements or contracts, prohibited acts of trade association, or non-observance of final and conclusive decision]

Any person committing one of the following offenses shall be punished by penal servitude for not more than two years or by a fine of not more than three million yen:

(i) Any person who, in violation of the provisions of Section 6(1) [prohibition of particular international agreements or contracts) or Section 8(1)(ii) [prohibition of particular international agreements or contracts by a trade association] entered into an international agreement or an international contract which contains such matters as constitute unreasonable restraint of trade;

(ii) Any person who violated the provision of Section 8(1) (iii) [limiting the number

of entrepreneurs by a trade association] or (iv) [restriction on function or activity of the constituent entrepreneur by a trade association]; or

(iii) Any person who failed to comply with the decision as provided for in Section 48(4) [recommendation decision], Section 53-3 [consent decision] or Section 54(1) or (2) [formal decision], after it has become final and conclusive.

Sec.91 [Penalties against holding company, prohibited stockholding or interlocking directorates, etc.]

Any person committing one of the following offenses shall be punished by penal servitude for not more than one year or by a fine of not more than two million yen:

(i) Any person who, in violation of the provisions of Section 9(1) [prohibition of establishment of a holding company], established a holding company, or violated the provisions of subsection (2) [prohibition of operation as a holding company] of the said section;

(ii) Any person who, in violation of the provisions of Section 9-2(1) [restriction on total amount of stockholding by a giant non-financial company], acquired or held stock;

(iii) Any person who, in violation of the provisions of the first part of Section 10(1) [prohibition of particular stockholding by a company], acquired or held stock;

(iv) Any person who, in violation of the provisions of Section 11(1) [restriction on stockholding rate by a financial company], acquired or held stock; or who, in violation of the provisions of subsection (2) of the said section, held stock;

(v) Any person who, in violation of the provisions of Section 13(1) [prohibition of particular interlocking directorates], held concurrently positions as an officer of a company;

(vi) Any person who, in violation of the provisions of the first part of Section 14(1) [prohibition of particular stockholding by a person other than a company], acquired or held stock; or

(vii) Any person who, in violation of the provisions of Section 17 [prohibition of evasion], committed such prohibitions or restrictions prescribed in the paragraphs above.

Sec.91-2 [Penalties against failure to file reports, etc.]

Any person committing one of the following offenses shall be punished by a fine of

not more than two million yen:

(i) Any person who, in violation of the provisions of Section 6(2) [filing requirement of specific international agreements or contracts], failed to file a report, or filed a false report;

(ii) Any person who, in violation of the provisions of Section 8(2) to (4) inclusive [filing requirement of a trade association], failed to file a report, or filed a false report;

(iii) Any person who, in violation of the provisions of Section 10(2) [filing requirement of stockholding by a company], failed to submit a report, or submitted a false report;

(iv) Any person who, in violation of the provisions of Section 13(3) [filing requirement of interlocking directorates], failed to file a report, or filed a false report;

(v) Any person who, in violation of the provisions of Section 14(2) [filing requirement of stockholding by a person other than a company], failed to submit a report, or submitted a false report;

(vi) Any person who, in violation of the provisions of Section 15(2) [filing requirement of mergers] (including cases where the said provisions are applied mutatis mutandis by Section 16 [filing requirement of acquisitions of business, etc.]), failed to file a report, or filed a false report;

(vii) Any person who, in violation of the provisions of Section 15(3) [waiting period of mergers], effected registration of establishment of a company by merger or the registration of change in the previously registered entry;

(viii) Any person who, in violation of the provisions of Section 15(3) [waiting period of mergers] which are applied mutatis mutandis by Section 16 [prohibition of particular acquisition of business, etc.], carried out an act coming under any one of the paragraphs of Section 16;

(ix) Any person who, in violation of the provisions of Section 18-2(1) [filing requirement of a report on parallel price increases], failed to file a report, or filed a false report; or

(x) Any person who, in violation of the provisions of Section 24-2(6) [filing requirement of resale price contacts], failed to file a report or filed a false report.

Sec.92 [Concurrent punishment]

Any person committing any one of the offenses stipulated in Sections 89 to 91 inclusive [penalties against private monopolization, unreasonable restraint of trade,

prohibited acts of trade association, prohibited international agreements or contracts, non-observance of final and conclusive decision, prohibited stockholding, etc.] may, according to the circumstances, be punished by both penal servitude and a fine.

Sec.92-2 [Penalties against perjury]

(1) Where any witness or expert witness, who testified in accordance with the provisions of Section 53-2 [qualification for witness, right to refuse testimony, oath, etc.], made a false statement or expert testimony, he shall be punished by penal servitude from not less than three months to not more than ten years.

(2) Where a person committing an offense under the preceding subsection confesses his crime prior to the termination of the hearing proceedings and before the discovery of such offense, the penalty for such offense may be commuted or remitted.

Sec.93 [Penalties against divulging secrets]

Any person who violated the provisions of Section 39 [duty to preserve trade secrets] shall be punished by penal servitude for not more than one year or by a fine of not more than one hundred thousand yen.

Sec.94 [Penalties against interference with inspection, etc.]

Any person who refused, obstructed or evaded the inspection as provided for in Section 46(1)(iv) [inspection] or (2) measures by investigator], or Section 51-2 [entrusted proceedings by hearing examiners], shall be punished by penal servitude for not more than six months or by a fine of not more than two hundred thousand yen.

Sec.94-2 [Penalties against non-compliance with compulsory measures]

Any person coming under any one of the following paragraphs shall be punished by a fine of not more than two hundred thousand yen:

(i) Any person who, in violation of such orders as provided for in Section 40 [compulsory powers for inquiry], failed to appear or to submit a report, information or data, or submitted a false report, information or data;

(ii) Any person concerned with a case or any witness who, in violation of the order issued to him under the provisions of Section 46(1)(i) [interrogation of persons concerned with a case or witnesses by the Commission] or (2) [measures by investigators], or Section 51-2 [entrusted proceedings by hearing examiners], failed to appear or to give testimony, or gave a false testimony, or failed to submit a report, or submitted a false report;

(iii) Any person who, in violation of the order issued to an expert witness under the provisions of Section 46(1)(ii) [the Fair Trade Commission's order to make expert testimony, etc.] or (2), or Section 51-2, failed to appear or to give expert testimony, or gave a false expert testimony;

(iv) Any person who, in violation of the order issued to the holder of the matters under the provisions of Section 46(1)(iii) [the Fair Trade Commission's order to submit documents, etc.] or (2), or Section 51-2, failed to submit the same; or

(v) Any person who, in violation of the order issued to a witness or an expert witness under the provisions of Section 154 (oath of witness) or Section 166 (oath of expert witness) of the Code of Criminal Procedures which are applied mutatis mutandis in Section 53-2 [qualification for witness, right to refuse testimony, oath, etc.], refused to take the oath.

Sec.95 [Double punishment]

(1) When a representative of a juridical person, or an agent, an employee or any other person in the service of juridical person or of an individual has, with regard to the business or property of the said juridical person or individual, committed a violation as provided for in each of the following paragraphs, the said juridical person or the said individual shall be punished by such fine as provided for in the said paragraphs in addition to the punishment of the offender.

(i) Section 89 [penalties against private monopolization or unreasonable restraint of trade, or substantial restraint of competition by a trade association] Fine of not more than 100 million yen.

(ii) Section 90 [penalties against prohibited international agreements or contracts, prohibited acts by a trade association, or non-observance of final and conclusive decision], Section 91 (excluding (v)) [penalties against holding company, prohibited stockholding, etc.], Section 91-2 [penalties against failure to file reports, etc.], Section 94 [penalties against interference with inspection, etc.] Fine as provided for in each of

the above sections.

(2) Where a representative, a manager, an agent, an employee or any other person in the service of a non-juridical organization has, with regard to the business or property of the said organization, committed a violation as provided for in each of the following paragraphs, the said non-juridical organization shall be punished by such fine as provided for in the said paragraphs in addition to the punishment to the offender.

(i) Section 89 [penalties against private monopolization or unreasonable restraint of trade, or substantial restraint of competition by a trade association] Fine of not more than 100 million yen.

(ii) Section 90 [penalties against prohibited international agreements or contracts, prohibited acts by a trade association, or non-observance of final and conclusive decision], Section 91(i), (vi), or (vii) (limited to only those relating to (i) or (vi)), or Section 91-2 (i), (ii), (v) or (ix). Fine as provided for in each of the above sections.

Sec.95-2 [Punishment of representatives of juridical persons who failed to prevent violation]

In case of a violation of Section 89(1)(i) [penalties against private monopolization or unreasonable restraint of trade], Section 90(i) [penalties against prohibited international agreements or contracts relating to unreasonable restraint of trade] or (iii) [non-observance of final and conclusive decision] or Section 91 [penalties against holding company, prohibited stockholding, etc.] (excluding (v)), the representative of a juridical person (excluding those who come under a trade association in case of violation of section 90(i) or (iii)) who failed to take necessary measures to prevent such violation knowingly of the existence of such a plan or who failed to take necessary measures to rectify such violation knowingly of the existence of such violation, shall also be punished by such a fine as provided for in the relevant sections.

Sec.95-3 [Punishment of directors, etc. of trade associations who failed to prevent violation]

(1) Where a violation of Section 89(1)(ii) [penalties against substantial restraint of competition by a trade association], or Section 90 was committed, a director or any other officer or a manager of a trade association or its constituent entrepreneurs

(including another entrepreneur who was acted for by a constituent entrepreneur) who failed to take necessary measures to prevent such violation knowingly of the existence of such a plan or who failed to take necessary measures to rectify such violation knowingly of the existence of such violation, shall also be punished by such a fine as provided for in the relevant sections.

(2) Where a director or any other officer or a manager of a trade association or its constituent entrepreneurs as prescribed in the preceding subsection, is a juridical person or any other organization, the provision of the said subsection shall apply to such director or any other officer or a manager of the said organization.

Sec.95-4 [Dissolution of trade associations]

(1) The Court may, when it considers that the sufficient grounds exist, declare a trade association to be dissolved simultaneously with the imposition of a penalty as provided for in Section 89(1)(ii) [penalties against substantial restraint of competition by a trade association], or Section 90 [penalties against prohibited international agreement or contracts, prohibited acts by a trade association, non-observance of final and conclusive decision, etc.].

(2) When the dissolution has been declared in accordance with the provisions of the preceding subsection, the trade association shall be dissolved by such declaration, notwithstanding the provisions of any other law or order, or articles of association, or any other stipulations.

Sec.96 [Exclusive accusation by the Fair Trade Commission]

(1) Any offense under Section 89 to 91 inclusive [penalties against private monopolization or unreasonable restraint of trade, prohibited acts of a trade association, prohibited international agreements or contracts, non-observance of final and conclusive decision and prohibited stockholdings, etc.] shall be considered only after an accusation of the Fair Trade Commission has been filed.

(2) The accusation under the preceding subsection shall be made in writing.

(3) The Fair Trade Commission, in filing the accusation under subsection (1) may,

when it considers it appropriate that the declaration under subsection (1) of the preceding section or Section 100(1)(i) [revocation of patent rights or patent licenses] should be made with respect to an offense under the accusation, state the said effect in the said accusation.

(4) The accusation under subsection (1) shall not be withdrawn after public prosecution has been instituted.

Sec.97 [Administrative fines for contraventions of decisions]

Any person who contravened a decision under Section 48(4) [recommendation decision], Section 53-3 [consent decision] or Section 54(1) or (2) [formal decision] shall be liable to an administrative fine of not more than five hundred thousand yen: Provided, That the foregoing shall not apply when the said act shall be punished under the penal provisions.

Sec.98 [Administrative fines for disobeying urgent injunction]

Any person who disobeyed a ruling of the court under the provisions of Section 67(1) or (2) [urgent injunction], shall be liable to an administrative fine of not more than three hundred thousand yen.

Sec.99

Deleted. (Act No.214 of 1949)

Sec.100 [Revocation of patent rights or patent licenses and exclusion from government contacts]

(1) The court may, in a case coming under Section 89 [penalties against private monopolization or unreasonable restraint of trade, or substantial restraint of competition by a trade association] or Section 90 [penalties against prohibited international agreements or contracts, prohibited acts by a trade association, and non-observance of final and conclusive decision, etc.] according to circumstances, make the following declaration simultaneously with the sentence of penalties: Provided, That the declaration under paragraph (i) hereunder shall be made only when the said patent

right, or exclusive or non-exclusive license for a patented invention belongs to the offender:

(i) That the patent under patent right, or the exclusive or non-exclusive license for the patented invention to which the offense relates shall be revoked; or

(ii) That the offender shall be barred from becoming a party to a contract with the government for a period of not less than six months and not more than three years after the date when the judgment became final and conclusive.

(2) When a judgment with the declaration as provided for in paragraph (i) of the preceding subsection becomes final and conclusive, the court shall transmit the certified copy thereof to the Director-General of the Patent Office.

(3) The Director-General of the Patent Office shall upon receipt of the certified copy of the judgment under the provisions of the preceding subsection, revoke the patent right, or the exclusive or non-exclusive license for the patented invention.

Annex III

SOUTH AFRICA

STATUTES OF THE REPUBLIC OF SOUTH AFRICA — TRADE AND INDUSTRY

MAINTENANCE AND PROMOTION OF COMPETITION ACT NO. 96 OF 1979

[ASSENTED TO 21 JUNE, 1979] [DATE OF COMMENCEMENT: 1 JANUARY, 1980]

(English text signed by the State President)

as amended by

Maintenance and Promotion of Competition Amendment Act, No. 58 of 1980
Maintenance and Promotion of Competition Amendment Act, No. 62 of 1983
Maintenance and Promotion of Competition Amendment Act, No. 12 of 1985
Maintenance and Promotion of Competition Amendment Act, No. 5 of 1986
Transfer of Powers and Duties of the State President Act, No. 97 of 1986
[with effect from 3 October, 1986—see title CONSTITUTIONAL LAW]
Maintenance and Promotion of Competition Amendment Act, No. 96 of 1987
Maintenance and Promotion of Competition Amendment Act, No. 88 of 1990

ACT

To provide for the maintenance and promotion of competition in the economy, for the prevention or control of restrictive practices, acquisitions and monopoly situations, and for matters connected therewith.

[Long title substituted by s. 10 of Act No. 12 of 1985 and by s. 8 of Act No. 88 of 1990.]

1. Definitions.—In this Act, unless the context otherwise indicates—

"acquisition" means the acquisition by the holder of a controlling interest in any business or undertaking involved in the production, manufacture, supply or distribution of any commodity, of such an interest—

(*a*) in any other business or undertaking so involved; or

(*b*) in any asset which is or may be utilized for or in connection with the production, manufacture, supply or distribution of any such commodity,

provided such acquisition has or is likely to have the effect of restricting competition directly or indirectly, and "acquire" has a corresponding meaning;

[Definition of "acquisition" amended by s. 1 (*a*) of Act No. 62 of 1983 and substituted by s. 1 (*a*) of Act No. 12 of 1985.]

"board" means the Competition Board established by section 3;

"committee" means a committee mentioned in section 4;

"commodity" includes any make or brand of any commodity, any book, periodical, newspaper or other publication, any building or structure and any service, whether personal, professional or otherwise, including any storage, transportation, insurance or banking service;

"controlling interest", in relation to—

(*a*) any business or undertaking, means any interest of whatever nature enabling the holder thereof to exercise, directly or indirectly, any control whatsoever over the activities or assets of the business or undertaking; and

(*b*) any asset, means any interest of whatever nature enabling the holder thereof to exercise, directly or indirectly, any control whatsoever over the asset;

[Definition of "controlling interest" substituted by s. 1 (*b*) of Act No. 12 of 1985.]

"co-operative society" .....

[Definition of "co-operative society" deleted by s. 1 (*c*) of Act No. 12 of 1985.]

"distribution" includes the rendering of a service, irrespective of whether or not the rendering of such service is attended by the supply of a commodity, and storage, transportation, purchase and sale;

"financial institution" .....

[Definition of "financial institution" deleted by s. 1 (*c*) of Act No. 12 of 1985.]

"Minister" means the Minister for Administration and Economic Co-ordination;

[Definition of "Minister" substituted by s. 1 (*b*) of Act No. 62 of 1983, by s. 1 (*a*) of Act No. 5 of 1986, by s. 1 of Act No. 96 of 1987 and by s. 1 (*a*) of Act No. 88 of 1990.]

"monopoly situation" means a situation where any person, or two or more persons with a substantial economic connection, control in the Republic or any part thereof, wholly or to a large extent, the class of business in which he or they are engaged in respect of any commodity;

[Definition of "monopoly situation" inserted by s. 1 (*b*) of Act No. 5 of 1986.]

"restrictive practice" means—

(*a*) any agreement, arrangement or understanding, whether legally enforceable or not, between two or more persons; or

(*b*) any business practice or method of trading, including any method of fixing prices, whether by the supplier of any commodity or otherwise; or

(*c*) any act or omission on the part of any person, whether acting independently or in concert with any other person; or

(*d*) any situation arising out of the activities of any person or class or group of persons,

which restricts competition directly or indirectly by having or being likely to have the effect of—

(i) restricting the production or distribution of any commodity; or

(ii) limiting the facilities available for the production or distribution of any commodity; or

(iii) enhancing or maintaining the price of or any other consideration for any commodity; or

[Para. (iii) substituted by s. 1 (*c*) of Act No. 5 of 1986.]

(iv) preventing the production or distribution of any commodity by the most efficient and economical means; or

(v) preventing or retarding the development or introduction of technical improvements or the expansion of existing markets or the opening up of new markets; or

(vi) preventing or restricting the entry of new producers or distributors into any branch of trade or industry; or

(vii) preventing or retarding the adjustment of any profession or branch of trade or industry to changing circumstances.

[Definition of "restrictive practice" amended by s. 1 (*c*) of Act No. 62 of 1983 and by s. 1 (*b*) of Act No. 88 of 1990.]

2. Application of Act.—(1) The provisions of this Act shall not be construed so as to—

(*a*) limit, subject to the provisions of subsection (2), any right acquired under—

(i) the Trade Marks Act, 1963 (Act No. 62 of 1963);

(ii) the Designs Act, 1967 (Act No. 57 of 1967);

(iii) the Plant Breeders' Rights Act, 1976 (Act No. 15 of 1976);

(iv) the Patents Act, 1978 (Act No. 57 of 1978); or

(v) the Copyright Act, 1978 (Act No. 98 of 1978); or

(*b*) prevent organizations of employees from protecting the interests of their members by entering into agreements or arrangements with employers or associations of employers in regard to any matter which may form the subject of an agreement under the Industrial Conciliation Act, 1956 (Act No. 28 of 1956).

(*c*) .....

[Para. (*c*) deleted by s. 2 (*c*) of Act No. 12 of 1985.]

(2) The provisions of paragraph (*a*) of subsection (1) of this section shall not be so construed that any person shall thereunder retain or be granted any right of enhancing or maintaining prices or any other consideration in any manner contemplated in the definition of "restrictive practice" in section 1.

[Sub-s. (2) substituted by s. 2 of Act No. 5 of 1986.]

(3) Except in so far as criminal liability is concerned, the provisions of this Act shall bind the State in so far as the State is concerned in the manufacture and distribution of commodities.

3. Establishment of Competition Board.—(1) There is hereby established a board to be known as the Competition Board.

(2) The board shall consist of—

(*a*) the chairman of the Board of Trade and Industries established in terms of section 2 of the Board of Trade and Industries Act, 1944 (Act No. 19 of 1944);

(*b*) the Registrar of Financial Institutions mentioned in section 1 of the Limitation and Disclosure of Finance Charges Act, 1968 (Act No. 73 of 1968);

(*c*) the Governor of the South African Reserve Bank referred to in section 3 (1) of the South African Reserve Bank Act, 1944 (Act No. 29 of 1944), or any person designated by him;

(*d*) the chairman of the National Marketing Council referred to in section 2 (1) of the Marketing Act, 1968 (Act No. 59 of 1968);

(*e*) one member nominated by the Minister of Finance;

(*f*) one member nominated by the Minister of Agricultural Economics and of Water Affairs;

(*g*) not fewer than two and not more than seven other members appointed by the State President on the grounds of having special knowledge of consumer affairs or knowledge of or experience in economics, industry, commerce, law or the conduct of public affairs,

of whom the Minister shall designate one as chairman and may designate one as vice-chairman.

[Sub-s. (2) amended by s. 2 of Act No. 62 of 1983 and substituted by s. 3 (*a*) of Act No. 12 of 1985.]

(3) The chairman of the board shall be a full-time member, and the Minister shall determine whether the other members appointed by the State President shall be full-time or part-time members.

(4) When for any reason the chairman is not able to perform his functions, or when there is a vacancy in the office of the chairman, the vice-chairman or, if he is not so able or if no vice-chairman has been designated, any member of the board designated by the Minister shall act as chairman.

[Sub-s. (4) substituted by s. 3 (*b*) of Act No. 12 of 1985.]

(5) A member of the board appointed by the State President shall hold office for such period, but not exceeding five years, and on such conditions as the Minister may determine at the time of his appointment, but shall vacate his office if he resigns as a member or if the State President at any time terminates his period of office as a member if in the opinion of the State President there are good reasons for doing so.

[Sub-s. (5) substituted by s. 44 of Act No. 97 of 1986.]

(6) A member of the board shall on the expiry of his term of office by effluxion of time be eligible for reappointment.

(7) The Minister may, if he sees fit, appoint, on such conditions and for such period as he may determine, a person as an additional member of the board for a particular purpose.

(8) (*a*) The meetings of the board shall be held at such times and places as the chairman may determine.

(*b*) The person presiding at a meeting of the board shall determine the procedure at such meeting.

(*c*) The decision of a majority of the members of the board present at any meeting thereof shall constitute the decision of the board.

(*d*) No proceedings of the board shall be invalid by reason only of the fact that a vacancy existed in its membership or that any member was not present during such proceedings or any part thereof.

(9) Such officers and employees as are required for the proper performance of the board's functions shall be appointed in terms of the Public Service Act, 1957 (Act No. 54 of 1957).

4. Committees of the board.—(1) The board may with the consent of the Minister establish committees to assist it in the performance of its functions.

(2) Any such committee shall consist of at least two members of the board, designated by the board, and such other persons as the Minister may appoint on the recommendation of the board.

(3) The board shall designate any member of the board, who is a member of any such committee, as chairman of the committee.

(4) The board may, subject to such conditions as it may deem fit, either generally or in relation to any particular matter, assign to any such committee any power conferred or duty imposed upon it in terms of this Act.

(5) No member of any such committee who is not a member of the board shall have access to the records of the board except with the approval of the chairman of the board.

5. Remuneration of members of board and committees.—(1) A member of the board who is not in the full-time service of the State shall be appointed at such remuneration as the Minister may, with the concurrence of the Minister of Finance, determine.

[Sub-s. (1) substituted by s. 4 (*a*) of Act No. 12 of 1985.]

(2) A member of the board appointed under section 3 (7) and a member of any committee of the board shall, if he is not in the full-time service of the State, be paid such allowances as the Minister may, with the concurrence of the Minister of Finance, determine.

[Sub-s. (2) substituted by s. 4 (*b*) of Act No. 12 of 1985.]

(3) No full-time member of the board mentioned in section 3 (3) shall, without the consent of the Minister, perform work for anybody else for remuneration.

(4) Any person who contravenes the provisions of subsection (3) shall be guilty of an offence.

6. Functions of board.—(1) The board—

(*a*) shall, subject to the directions of the Minister, make such investigations as it may consider necessary into, and advise the Minister in regard to—

(i) all aspects of economic competition policy, including the entrepreneurial activities in respect of institutions directly or indirectly controlled by the State;

(ii) the co-ordination of the official competition policy in a manner consistent with official economic objectives;

(iii) the implementation and administration of such competition policy;

(iv) new developments and trends in regard to the matters mentioned in subparagraphs (i), (ii) and (iii);

(*b*) shall undertake a continuous study of trends towards increased economic concentration, with a view to the investigation of monopoly situations which appear not to be justified in the public interest;

(*c*) may from time to time issue information on current policy in regard to restrictive practices, acquisitions and monopoly situations, to serve as general guidelines for the benefit of persons concerned therein;

(*d*) may consult with any interested party in connection with any restrictive practice or monopoly situation which exists or may come into existence, or any acquisition which has been or is being made or is proposed;

(*e*) may receive and dispose of representations relating to any matter with which it may deal in terms of this Act; and

(*f*) shall or may, as the case may be, perform any other function assigned to it by this Act.

[Sub-s. (1) amended by s. 5 of Act No. 12 of 1985 and substituted by s. 2 (*a*) of Act No. 88 of 1990.]

(2) (*a*) On the written application of any person who proposes to enter into any transaction which will or is calculated to result in an acquisition, the board may, with the consent of the Minister, issue, subject to such conditions as the board may deem fit, a ruling to the effect that, on the facts and information included in such application or furnished by the applicant or any other person at the request of the board, in the opinion of the board circumstances exist which justify such acquisition in the public interest.

[Para. (*a*) substituted by s. 2 (*b*) of Act No. 88 of 1990.]

(*b*) Subject to the said conditions, if any, any such ruling shall preclude the Minister from issuing any notice under section 14 (1) (*c*) in respect of such acquisition on the basis of the said facts and information.

(3) .....

[Sub-s. (3) deleted by s. 2 (*c*) of Act No. 88 of 1990.]

(4) The board shall as soon as possible after 31 December in each year furnish the Minister with a report in respect of its work during the year ending on that date.

7. Procedure at investigations.—(1) For the purposes of any investigation under this Act, the board or a committee may—

(*a*) summon any person who is believed to be able to furnish any information on the subject of the investigation or to have in his possession or under his control any book, document or other object which has any bearing upon that subject, to appear before the board or committee at a time and place specified in the summons, to be interrogated or to produce such book, document or other object; and

(*b*) interrogate any such person under oath or affirmation administered by the chairman, and examine or retain for examination any such book, document or other object: Provided that any person from whom any book, document or other object has been taken and retained in terms of this subsection shall, so long as such book, document or object is in the possession of the board or a committee, at his request be allowed, at his own expense and under the supervision of the investigating officer, to make copies thereof or to take extracts therefrom at any reasonable time.

(2) A summons for the attendance of any person before the board or a committee or for the production to the board or a committee of any book, document or other object shall be in the form prescribed by regulation under section 20 shall be signed by the chairman of the board or committee and shall be served in the manner so prescribed.

(3) Any person who has been summoned to attend before, or to produce any book, document or other object to, the board or a committee and who, without sufficient cause (the onus of proof of which shall rest upon him), fails to attend at the time and place specified in the summons or to retain in attendance until he is excused by the chairman from further attendance or, having attended, refuses to be sworn or to make an affirmation after he has been asked by the chairman to do so, or having been sworn or having made affirmation, fails to answer fully and satisfactorily any question lawfully put to him, or fails to produce any book, document or other object in his possession or under his control which he has been summoned to produce, shall be guilty of an offence.

(4) Any person who, after having been sworn or having made affirmation, gives false evidence before the board or a committee on any matter, knowing such evidence to be false or not knowing or not believing it to be true, shall be guilty of an offence.

(5) The law relating to privilege as applicable to a witness giving evidence before, or summoned to produce a book, document or other object to, a provincial division of the Supreme Court of South Africa shall apply in relation to any person summoned under this section.

(6) Nothing contained in this Act shall be deemed to compel the production by an attorney of a letter, report or other document containing a privileged communication made by or to him as an attorney, or to authorize the seizure or retention thereof.

(7) .....

[Sub-s. (7) deleted by s. 6 of Act No. 12 of 1985.]

8. Board may require returns.—(1) To enable the board properly to perform its functions, it may by notice in writing require any person engaged in business or in any industry to furnish the board, within a period specified in the notice, or from time to time before such dates or within such periods as may be so specified, with a written return showing in detail such information with respect to the business or undertaking or activities of such person as may be specified in the notice, including information as to—

(*a*) any business agreement which such person may at any time have entered into or intend to enter into with any other person, or in which he may at any time have been concerned:

ss. 8–9

(*b*) any arrangement or understanding to which such person, or any business or undertaking in which he is or was concerned, may be, may become or may at any time have been a party; or

(*c*) any interest which such person, or any business or undertaking in which he is or was concerned, may be engaged in acquiring, may intend to acquire or may at any time have acquired in any other business or undertaking or in any asset.

[Sub-s. (1) substituted by s. 3 of Act No. 62 of 1983 and by s. 3 of Act No. 88 of 1990.]

(2) No person shall in any notice under subsection (1) be required to furnish the board with any return specified in that notice within a period of less than 14 days after the date of such notice.

(3) Any person who fails to comply with any notice under subsection (1), or who in response to any such notice knowingly furnishes information which is false in any material particular, shall be guilty of an offence.

9. Investigating officers.—(1) For the purposes of the application of this Act, the board may designate a member of the board, or an officer in its service whom it considers suitable, as an investigating officer.

(2) In order to ascertain whether any provision of this Act or any notice issued thereunder is being observed by any person to whom it applies, or to obtain any information required by the board in relation to any investigation by it as to restrictive practices, acquisitions or monopoly situations, any such investigating officer may at all reasonable times enter any premises on or in which any commodity, book, statement or other document connected with that observation or information is or is suspected to be, and may—

(*a*) inspect or search such premises;

(*b*) demand any information regarding the said commodity from the owner or person in charge of such premises;

(*c*) examine or make copies of, or take extracts from, any book, statement or other document found in or upon such premises and which refers or is suspected to refer to any agreement, arrangement, understanding, business practice or method of trading which may be relevant at the said investigation by the board;

(*d*) demand from the owner or any person in charge of such premises or from any person in whose possession or charge such book, statement or other document is, an explanation of any entry therein.

[Sub-s. (2) amended by s. 4 (*a*) of Act No. 88 of 1990.]

(3) Any person designated under subsection (1) shall be provided with a letter of authority signed by or on behalf of the chairman of the board and certifying that such person has been designated as an investigating officer in terms of this Act in relation to any specific alleged restrictive practice, acquisition or monopoly situation.

[Sub-s. (3) substituted by s. 4 (*b*) of Act No. 88 of 1990.]

(4) If an investigating officer referred to in subsection (1) intends to perform any function under this section, he shall first exhibit to any person to be affected thereby the written authority issued to him in terms of subsection (3).

(5) Any person who—

(*a*) obstructs or hinders any such investigating officer in the performance of his functions under this section;

(*b*) when any such investigating officer demands of him an explanation or information relating to a matter within his knowledge, refuses or fails to give such explanation or information or gives an explanation or information which is false or misleading, knowing it to be false or misleading; or

(*c*) falsely represents himself to be any such investigating officer,

shall be guilty of an offence.

10. Investigation by board in respect of restrictive practices, acquisitions and monopoly situations.—(1) Subject to the provisions of subsection (2), the board may on its own initiative, and shall at the request of the Minister, make such investigation as it may consider necessary—

(*a*) into any restrictive practice which the board or the Minister, as the case may be, has reason to believe exists or may come into existence;

(*b*) in order to ascertain—

(i) whether any acquisition has been, is being or is proposed to be made;

(ii) the nature and extent of the controlling interest held and acquired, being acquired or proposed to be acquired;

(*c*) into any particular type of business agreement, arrangement, understanding, business practice or method of trading in general or in relation to any particular commodity or any class or kind of commodity or any particular business or undertaking or any class or type of business or undertaking or any particular area which in the opinion of the board or the Minister, as the case may be, is commonly adopted for the purpose of or in connection with the creation or maintenance of restrictive practices;

(*d*) into any monopoly situation which the board or the Minister, as the case may be, has reason to believe exists or may come into existence.

(2) An investigation referred to in subsection (1) (*a*), (*b*), (*c*) or (*d*) shall not be made or proceeded with by the board on its own initiative, if in the opinion of the Minister such investigation is not in the public interest.

(3) Where an investigation is made in terms of subsection (1) (*a*), (*b*) or (*d*), the board shall within three months from the date of the notice referred to in subsection (4), or within such further period as the Minister may at the request of the board determine, report to the Minister in terms of section 12 (1) as to the result of the investigation, or as to any arrangement which may have been made under section 11.

(4) The board shall by notice in the *Gazette* make known, and furnish particulars of, any investigation which it proposes to make in terms of subsection (1), and further make known that any person may within 30 days from the date of the notice make such representations in writing regarding such investigation to the board as such person may consider necessary.

(5) After any such notice relating to any investigation in terms of subsection (1) (*a*) or (*b*) has been published and before the relevant report is submitted to him, the Minister may, on the recommendation of the board, prescribe by notice in the *Gazette*, for such period as may be specified in the notice, but not exceeding the period or further period contemplated in subsection (3), such action as in the opinion of the Minister shall be taken to stay or prevent any restrictive practice which exists or may come into existence or any acquisition being made or proposed, as the case may be.

(6) Any notice under subsection (5) may upon the recommendation of the board be amended or withdrawn by the Minister at any time, and shall not be subject to review by or appeal to any court of law.

(7) Any person who contravenes or fails to comply with a notice under subsection (5) shall be guilty of an offence.

[S. 10 amended by s. 4 of Act No. 62 of 1983 and by s. 3 of Act No. 5 of 1986 and substituted by s. 5 of Act No. 88 of 1990.]

11. Negotiations by board.—(1) Whenever the board has issued any notice in terms of section 10 (4), it may at any time thereafter negotiate with any person or any body, corporate or unincorporate, with a view to making an arrangement which in the opinion of the board—

(*a*) will ensure the discontinuance of any restrictive practice which exists or may come into existence and which is the subject of an investigation in terms of section 10 (1) (*a*);

(*b*) will do away with, terminate, prevent or alter any acquisition which has been or is being made or is proposed, or any monopoly situation which exists or may come into existence, as the case may be, and which is the subject of an investigation in terms of section 10 (1) (*b*) or (*d*),

[Para. (*b*) substituted by s. 4 of Act No. 5 of 1986.]

either wholly or to such extent as, in the opinion of the board, it is not justified in the public interest.

(2) If the board has made any arrangement referred to in subsection (1), it shall make a report to the Minister thereon.

12. Report by board.—(1) The board shall report to the Minister as to the result of any investigation made by it in terms of section 10 (1).

(2) If after investigation in terms of section 10 (1) (*a*), (*b*) or (*d*) the board—

(*a*) is of the opinion that a restrictive practice or monopoly situation exists or was in existence or may come into existence at any time after the date of the notice in terms of section 10 (4), or that an acquisition has been made or is being made or is proposed;

(*b*) is not satisfied that such restrictive practice or acquisition is justified in the public interest or is satisfied that such monopoly situation is not justified in the public interest; and

[Para. (*b*) substituted by s. 6 (*a*) of Act No. 88 of 1990.]

(*c*) has not made an arrangement with the parties concerned which has been confirmed by the Minister in terms of section 13 (2) (*a*),

the board shall recommend to the Minister that such action be taken under section 14 (1) as it may consider necessary in the circumstances.

[Sub-s. (2) amended by s. 5 (*a*) of Act No. 62 of 1983 and by s. 7 of Act No. 12 of 1985, and substituted by s. 5 (*a*) of Act No. 5 of 1986.]

(3) The Board shall not in any report made by it as to any investigation in terms of section 10 (1), mention the name or particulars of the business of any person whose business has been investigated, except where in its opinion such person is concerned in the existence of a restrictive practice or monopoly situation which exists or may come into existence or is a party to any acquisition which has been or is being made or is proposed.

[Sub-s. (3) substituted by s. 5 (*b*) of Act No. 5 of 1986.]

(4) Every such report which in the opinion of the Minister may be made known without detriment to the public interest—

(*a*) shall as soon as practicable be laid upon the Tables of Parliament;

(*b*) may at any time, either before or after it is or was laid upon the Tables of Parliament in terms of paragraph (*a*), be published by the Minister in the *Gazette* or be made known by the Minister in any other manner that the Minister may deem expedient.

[Sub-s. (4) substituted by s. 5 (*b*) of Act No. 62 of 1983 and by s. 6 (*b*) of Act No. 88 of 1990.]

13. Procedure after investigation.—(1) The Minister may after consideration of any recommendation in terms of section 12 (2)—

(*a*) direct the board to undertake such negotiations as are mentioned in section 11 (1) and, if it has made any relevant arrangement, to report to the Minister thereon; and

(*b*) if the board advises him that it has found it impracticable to negotiate with any relevant person or body or has not within a period determined by him, and which he may from time to time in his discretion extend, succeeded in making an arrangement with any such person or body, take such steps under section 14 (1) (*c*) as the board may recommend.

(2) The Minister may after consideration of a report by the board on any arrangement mentioned in section 11 (2) or subsection (1) (*a*) of this section, if he considers it to be in the public interest—

(*a*) confirm any such arrangement, either without modification or with such modifications, if any, as may be agreed to by the person concerned, and either unconditionally or subject to such conditions as may be agreed to by such person and as the Minister may on the recommendation of the board deem fit; or

(*b*) set aside any such arrangement and give such directions or prescribe such requirements under section 14 (1) (*c*) as he may on the recommendation of the board consider necessary under the circumstances,

and any such arrangement or modified arrangement, together with the conditions, if any, subject to which it has been confirmed, shall be published by the Minister by notice in the *Gazette*, and shall thereupon have the same effect as a notice published under section 14 (1) (*c*).

(3) Any person who contravenes or fails to comply with any notice under subsection (2) shall be guilty of an offence.

14. Manner of dealing with restrictive practices, acquisitions and monopoly situations.—(1) Whenever after consideration of a report by the board in terms of section 12 (1) as to the result of any investigation made by it in terms of section 10 (1) (*a*), (*b*) or (*d*), the Minister is of opinion that a restrictive practice exists or may come into existence or that an acquisition has been or is being made or is proposed and is not satisfied that such restrictive practice or acquisition is justified in the public interest, or is of opinion that a monopoly situation exists or may come into existence and is satisfied that such monopoly situation is not justified in the public interest, and has not confirmed any arrangement which may have been made in terms of section 11 (1) or 13 (1) (*a*) in respect of such restrictive practice, acquisition or monopoly situation—

(*a*) the Minister of Finance may, at the request of the Minister, in terms of the Customs and Excise Act, 1964 (Act No. 91 of 1964), by notice in the *Gazette* suspend, as from the date of the publication of such notice, any duty to be paid upon imported goods of like nature to any goods affected by the operation of that restrictive practice, acquisition or monopoly situation, to the extent and for such period as he may deem fit;

(*b*) the Price Controller may at the request of the Minister fix, under the Price Control Act, 1964 (Act No. 25 of 1964), the maximum price at which any commodity, other than any insurance or banking service, affected by the operation of the said restrictive practice, acquisition or monopoly situation, may be sold by any person to any other person or at which any person may purchase such commodity from any other person;

(*c*) the Minister may by notice in the *Gazette*—

(i) declare the said restrictive practice, acquisition or monopoly situation to be unlawful, and require any person who in the opinion of the Minister

is concerned in the said restrictive practice or monopoly situation or who in his opinion is or was a party to the said acquisition, to take such action, including steps for the dissolution of any body corporate or unincorporate, the severance of any connection or of any form of association between two or more persons, including any such bodies, the termination of the membership of a member of any body corporate or the application of any prohibition by the Minister on the exercise of any right to vote attached to the holding of any share in any such body, as the Minister may consider necessary to ensure the discontinuance or prevention of that restrictive practice or monopoly situation or the abolition or prevention of that acquisition or to eliminate any undesirable features thereof;

(ii) require any person who is or was a party to any agreement, arrangement, understanding or omission or applies or has applied any business practice or method of trading or commits or has committed any act or brings or has brought about any situation which may be specified in the notice, to terminate or to cease to be a party to such agreement, arrangement, understanding or omission or to refrain from applying such business practice or method of trading or to cease to commit that act or to bring about that situation or to refrain from at any time becoming a party to any agreement, arrangement, understanding or omission or applying any business practice or method of trading or committing any act or bringing about any situation of a nature specified in the notice which in the opinion of the Minister is likely to have the same effect.

(2) After further investigation by the board and at the request of the Minister—

(*a*) the Minister of Finance may withdraw any notice under subsection (1) (*a*) or amend it in such manner as he may deem fit;

(*b*) the Price Controller may under the Price Control Act, 1964, withdraw or amend any maximum price fixed as contemplated in subsection (1) (*b*).

(3) Any notice under subsection (1) (*c*)—

(*a*) shall not be published until after the relevant report of the board has in terms of section 12 (4) (*b*) been published by the Minister in the *Gazette* or made known by the Minister in any other manner;

(*b*) shall, subject to the provisions of subsection (4), come into operation upon a date fixed by the Minister and specified in such notice, not being less than six weeks after the date of publication thereof;

(*c*) may prescribe such requirements as the Minister may consider necessary to achieve the objects of that notice and specify the persons by whom the terms of such notice or any such requirement shall be complied with, and the periods within which and the conditions subject to which those terms or that requirement shall be complied with by any such person;

(*d*) may at any time after further investigation by the board be withdrawn by the Minister or be amended by him in such manner as he may deem fit.

(4) (*a*) If an appeal is lodged with the Minister in terms of section 15 (5) in respect of a notice under subsection (1) (*c*) of this section, that notice shall, subject to the order of the special court hearing that appeal, come into operation on such date as the Minister may determine and make known by notice in the *Gazette*, but not earlier than six weeks after the date of the notice referred to in section 15 (14).

(*b*) For the application of paragraph (*a*), the Minister shall as soon as practicable after the lodging of an appeal with him, give notice of that lodging in the *Gazette*.

(5) (*a*) Whenever after consideration of a report by the board in terms of section 12 (1) as to the result of any investigation undertaken by it in terms of section 10 (1) (*c*), the Minister is of opinion that it is in the public interest, he may by notice in the *Gazette* declare any particular type of agreement, arrangement, understanding, business practice or method of trading which was the subject of the investigation to be unlawful, either generally or in respect of any particular area, according as to whether the investigation was of a general nature or was undertaken in relation to a particular area, and prohibit any person from entering into or being or continuing to be a party to any such agreement, arrangement or understanding or from applying any such business practice or method of trading either wholly or to the extent or subject to any exemption contemplated in paragraph (*b*), provided the Minister has not less than one month before the date of publication of the notice published the text of the proposed notice in the *Gazette*, together with a statement of his intention to publish such a notice in the *Gazette*.

(*b*) The Minister may, on the recommendation of the board, in a particular case in writing grant exemption from any prohibition contemplated in paragraph (*a*) to such extent and subject to such conditions as may be specified in the exemption.

(6) A notice under subsection (5) may at any time after further investigation by the board be withdrawn by the Minister or amended in such a manner as he may deem fit, provided, in the case of such amendment, he has not less than one month before the date of publication of the amending notice published the text of the proposed amending notice in the *Gazette*, together with a statement of his intention to publish such amending notice in the *Gazette*.

(7) Any person who contravenes or fails to comply with any notice published under this section, shall be guilty of an offence.

[S. 14 amended by s. 6 of Act No. 62 of 1983, by s. 8 of Act No. 12 of 1985, by s. 6 of Act No. 5 of 1986 and by s. 2 of Act No. 96 of 1987 and substituted by s. 7 of Act No. 88 of 1990.]

15. **Appeals from Minister's decisions.**—(1) There shall be a right of appeal by any person affected by a notice under section 14 (1) (*c*), to a special court which shall be constituted as provided in this section.

(2) A special court may be constituted by the State President by proclamation in the *Gazette*, with jurisdiction throughout the Republic or in one or more specified areas, for the hearing of all or any one or more appeals lodged in terms of subsection (5), as the State President may consider necessary.

(3) Any such court shall consist of a judge of the Supreme Court of South Africa, who shall be the president of the court, and two other members, of whom—

(*a*) one shall be the holder of a university degree in economics who in the opinion of the State President has a thorough knowledge of economics; and

(*b*) one shall be a person who in the opinion of the State President has wide experience of industrial, commercial or financial matters or, where the State President in his discretion upon application by an appellant so directs, is a professional engineer as defined in the Professional Engineers' Act, 1968 (Act No. 81 of 1968).

(4) The members of a special court who are not in the full-time service of the State may be paid such remuneration and allowances as may in each case be determined by the Minister after consultation with the Minister of Justice.

(5) An appeal to a special court in terms of this section shall be lodged with the Minister in writing within six weeks after the date of publication of the notice to which the appeal relates, and shall set forth the grounds on which the appeal is based.

(6) The date, time and place for the hearing of any such appeal shall be fixed by the president of the special court concerned and shall be communicated in writing to the appellant through the Minister not less than 30 days before the date so fixed.

(7) The Minister may be represented at the hearing of any such appeal by any person designated by him, and the appellant may appear at such hearing in person or be represented thereat by his advocate, attorney or agent.

(8) Any such hearing may from time to time be adjourned by the president of the special court concerned to such date, time and place he may deem fit.

(9) The sittings of a special court shall be held in public, but the president of the court may exclude from being present thereat or require to withdraw therefrom any person whose attendance is not necessary.

(10) A special court may after consideration of any appeal, confirm or set aside the notice to which the appeal relates or amend it in such manner as it may deem equitable, and may make such orders as to costs as it may consider just.

(11) The decision of a majority of the members of a special court shall be the decision of the court: Provided that any matter of law arising for decision by that court and any question as to whether a matter for decision is a matter of fact or a matter of law, shall be decided by the president of the court and that no other member shall have any voice in the decision.

(12) An order as to costs made by a special court shall have effect and may be enforced as if it had been given in the course of proceedings before a division of the Supreme Court of South Africa having jurisdiction in the place where the sitting at which that order was made took place.

(13) The decision of a special court shall not be subject to appeal to or review by any court of law.

(14) An order of a special court confirming, setting aside or amending the notice to which the order relates, shall be made known by the Minister by notice in the *Gazette*, and any amendment made to a notice by such an order shall have effect as if it were an amendment made under section 14 (3) (*d*).

(15) The provisions of sections 84 and 85 of the Income Tax Act, 1962 (Act No. 58 of 1962), shall *mutatis mutandis* apply with reference to a special court constituted under this section.

16. .....

[S. 16 repealed by s. 9 of Act No. 12 of 1985.]

17. **Preservation of secrecy.**—(1) No person shall, except for the purposes of the performance of his functions in terms of this Act or for the purposes of legal proceedings under this Act or when required to do so by any court of law or under any law, disclose to any other person any information acquired by him in the performance of his functions in terms of this Act and relating to the business or affairs of any other person.

(2) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence.

18. **Prohibition of refusal on certain grounds to supply commodities.**—Any supplier of any commodity who, by reason of the fact, or because he suspects or believes, whether or not the suspicion or belief is justified or correct, that any person—

(*a*) has given evidence before the board or a committee at any investigation under this Act; or

(*b*) has furnished the board or a committee with any information which by or under this Act he is required to furnish; or

(*c*) has given evidence before a court of law,

fails or refuses to supply, under the usual conditions of supply, such person at his request with any such commodity, shall be guilty of an offence.

19. Penalties.—Any person shall be liable on conviction of—

(*a*) any offence under section 5 (4), 7 (3) or (4), 9 (5) or 17 (2), to a fine not exceeding R2 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment;

(*b*) any offence under section 8 (3), 10 (7) or 18, to a fine not exceeding R10 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment;

(*c*) any offence under section 13 (3) or 14 (7), to a fine not exceeding R100 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

20. Regulations.—The Minister may make regulations in regard to any matter which he considers it necessary to prescribe in order to give effect to the objects of this Act, including regulations prescribing the procedure to be observed in the conduct and hearing of appeals under section 15, and regulations as to any matter which in terms of this Act is required or permitted to be prescribed by regulation.

21. Repeal of Act 24 of 1955, Act 14 of 1958, Act 48 of 1975, Act 23 of 1976 and Act 75 of 1978.—(1) Subject to the provisions of subsection (2), the Regulation of Monopolistic Conditions Act, 1955, the Regulation of Monopolistic Conditions Amendment Act, 1958, the Regulation of Monopolistic Conditions Amendment Act, 1975, the Regulation of Monopolistic Conditions Amendment Act, 1976, and the Regulation of Monopolistic Conditions Amendment Act, 1978, are hereby repealed.

(2) (*a*) Any matter in connection with which anything has been done under any law mentioned in subsection (1) prior to the commencement of this Act or anything incidental to any such matter or which may be necessary to be done in connection with any such matter or which arises therefrom shall as from the said commencement be dealt or further dealt with in terms of the relevant provisions of this Act.

(*b*) The provisions of Government Notice No. R.1038 of 25 June 1969, as construed by section 1 (*a*) of the Regulation of Monopolistic Conditions Amendment Act, 1978 (Act No. 75 of 1978), shall remain in force until that Government Notice is amended or withdrawn by the Minister.

(*c*) Any arrangement in terms of section 3 (3) of the Regulation of Monopolistic Conditions Act, 1955 (Act No. 24 of 1955), shall be deemed to be an arrangement which was made between the board and the person or body concerned under section 11 (1) of this Act and which was published in terms of section 13 (2) of this Act.

[Sub-s. (2) substituted by s. 1 (1) of Act No. 58 of 1980.]

22. Short title and commencement.—This Act shall be called the Maintenance and Promotion of Competition Act, 1979, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.

GOVERNMENT GAZETTE NO 10211, 2 MEI 1986

DEPARTMENT OF TRADE AND INDUSTRY

No. 801 2 May 1986

MAINTENANCE AND PROMOTION OF COMPETITION ACT, 1979

I. I, Dawid Jacobus de Villiers, Minister of Trade and Industry, acting by virtue of the powers vested in me by section 14 (5) of the Maintenance and Promotion of Competition Act, 1979 (Act 96 of 1979) hereinafter referred to as "the Act"), with the concurrence of the Minister of Finance, and by virtue of a general investigation in terms of section 10 (I) (c) of the Act, hereby declare any agreement, arrangement, understanding, business practice or method of trading referred to in paragraph 2 to be unlawful.

Prohibition

2. Subject to the provisions of paragraphs 8 and 9 no person shall enter into, be a party to or continue to be a party to any agreement, arrangement, understanding, business practice or method of trading which in terms of this notice constitutes -

(a) resale price maintenance;

(b) horizontal price collusion;

(c) horizontal collusion on conditions of supply;

(d) horizontal collusion on market sharing; or

(e) collusive tendering.

Resale price maintenance

3. "Resale price maintenance" referred to in paragraph 2 (a) -

(a) means any agreement, arrangement, understanding, business practice or method of trading which has, or is likely to have, the effect of directly or indirectly compelling or inducing a reseller of any commodity to charge a particular, or a particular minimum, resale price, whether or not such price is determined or is to be determined by calculation or by reference to any

discount; and

(b) excludes the recommendation, by an individual supplier, of a resale price as a guide for the convenience of the reseller who may reduce such price at his discretion and which is not directly or indirectly enforced by means of the withholding of supplies, the denial of distribution rights or by means of any discriminatory sales condition or a penalty or by any other method likely to have such effect: Provided that where a recommended resale price appears on or in relation to a commodity, the words "recommended price" shall appear with such price.

Horizontal price collusion

4. "Horizontal price collusion" referred to in paragraph 2 (b) -

(a) means any agreement, arrangement or understanding between or among two or more suppliers of any commodity, or of substantially similar commodities, to

(i) charge a particular, or a particular minimum, price; or

(ii) use in any way, any price as a recommended price or as a guide, whether or not such price is determined or is to be determined by calculation or by reference to any discount;

(b) includes the use of an association or of a company, close corporation or other juristic person in which such suppliers have an interest, to effect the horizontal price collusion in any way; and

(c) excludes, in respect of a professional service by members of an organised profession, the issue of a tariff of recommended fees as a guide for the convenience of the members of such profession and which is not directly or indirectly enforced or any structure of tariffs or fees authorised by law: Provided that -

(i) such profession or any rule of law, as a condition for membership, requires the members to have passed an examination in fields of study relevant to practicing in that profession; and

(ii) such profession has a code of professional ethics empowering it to exclude from membership, or to set in motion a procedure to exclude from membership, those persons found guilty of improper performance of their duties or of conduct which is discreditable to their profession.

Horizontal collusion on conditions of supply

5. "Horizontal collusion on conditions of supply" referred to in paragraph 2 (c) -

(a) means any agreement, arrangement or understanding between or among two or more suppliers of any commodity, or of substantially similar commodities, to supply, or to tender to supply in response to a call or request for tenders, such commodity or commodities

(i) only on any particular condition or term; or

(ii) using any condition or term as a recommended condition or term or as a guide;

(b) includes the use of an association or of a company, close corporation or other juristic Person in which such suppliers have an interest, to effect the horizontal collusion on conditions of supply in any way; and

(c) excludes, in respect of a professional service by members of an organised profession contemplated in paragraph 4 (c), a recommendation which is not directly or indirectly enforced that such service be provided on a particular condition or term.

Horizontal collusion on market sharing

6. "Horizontal collusion on market sharing" referred to in paragraph 2 (d) -

(a) means any agreement, arrangement or understanding between or among two or more suppliers of any commodity, or of substantially similar commodities, having the effect of dividing wholly or partially the market for such commodity or commodities between or among them -

(i) territorially;

(ii) in respect of customers or classes of customers;

(iii) quantitatively, by reference to the quantities or shares to be produced or supplied by each such supplier or by reference to any limitation of production facilities; or

(iv) in respect of technical factors relating to the commodities concerned; and

(b) includes the use of an association or of a company close corporation or other juristic Person in which such suppliers have an interest, to effect the horizontal collusion on market sharing in any way.

Collusive tendering

7. "Collusive tendering" referred to in paragraph 2 (e) means -

(a) any agreement, arrangement or understanding between or among two or more suppliers of any commodity that one or some or all of such suppliers shall not submit a tender in response to a call or request for tenders; or

(b) the submission by a supplier of any commodity, in response to a call or request for tenders, of a tender that is in any respect arrived at by agreement, arrangement or understanding between or among two or more suppliers, including the first mentioned sup-plier, of such commodity,

where the agreement, arrangement or understanding is not made known to the person calling for or requesting tenders at or before the time when any tender is made by any person who is a party to the agreement, arrangement or understanding.

Restriction of application

8. The provisions of this notice shall not be so construed as to apply in respect of any agreement, arrangement, understanding, business practice or method of trading between or among -

(a) a holding company and its wholly-owned subsidiary, or between companies which are the wholly-owned subsidiaries of the same holding company;

(b) close corporations which have only the same person or persons as members;

(c) companies of which all the shares are held by the same person or close corporation, or between such close corporation and such companies; or

(d) persons in relation to -

(i) goods which are to be exported to any country other than Botswana, Lesotho, Swaziland, a state the territory of which formerly formed part of the Republic of South Africa and any

territory within the Republic of South Africa in respect of which a Legislative Assembly has been established in terms of the National States Constitution Act, 1971 (Act 21 of 1971); or

(ii) any service to be rendered in any country other than the Republic of South Africa or those countries, states or territories referred to in (i) above,

or in respect of any agreement, arrangement, understanding, business practice or method of trading authorised by the provisions of any law.

Exemptions

9. On the recommendation of the Competition Board I may, in a particular case, in terms of section 14 (5) (b) of the Act in writing grant exemption from any prohibitions contemplated in this notice to the extent and subject to such conditions as may be specified in the exemption.

Definitions

10. In this notice -

(a) "close corporation" means a close corporation registered in terms of the Close Corporations Act, 1984 (Act 69 of 1984);

(b) "commodity" includes any make or brand of any commodity, any book, periodical, newspaper or other publication, any building or structure and any service, whether personal, professional or otherwise, including any storage, transportation, insurance or banking service;

(c) "company", "holding company" and "wholly owned subsidiary" shall have the meaning assigned to them in section I of the Companies Act, 1973 (Act 61 of 1973);

(d) "Competition Board" means the Competition Board established by section 3 of the Act;

(e) "price" includes any rental, any fee in respect of a professional or other service, the rate of interest in respect of any loan or debt, the premium in respect of any insurance or any other consideration in respect of a commodity; and

(f) "supplier" includes, unless the context otherwise indicates, the

manufacturer, producer, seller, and reseller of goods, any supplier of goods by way of lease or hire or otherwise and the provider of any professional, financial or other service.

Withdrawal of notice

11. Government Notice R. 1038 of 25 June 1969 is hereby withdrawn.

State is bound

12. Pursuant to the provision of section 2 (3) of the Act, the provisions of this notice shall, except in so far as criminal liability is concerned, bind the State in so far as the State is concerned in the manufacture and distribution of commodities.

D. J. DE VILLIERS,

Minister of Trade and Industry.